Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

BRIEF OF MAYNARD F. STILES.

STATEMENT.

King, the appellee, brought his bill against the appellants to annul certain patents and deeds under which they claimed, upon the ground that they were clouds upon his title to the tract of land claimed by him, showing by his bill that the defendants relied upon certain provisions of the constitution of the State which the complainant charged to be inapplicable to their case, but which, if applicable, were in contravention of the Constitution of the United States. To this bill the defendants appeared without process, by Henry C. Flesher, Esq., an attorney of the court,

and from a decree for plaintiff appealed to this court. Now *one* of the appellants, by other counsel, moves the court to dismiss the appeal, and at the same time annul the decree and disbar the said Flesher, upon the ground that his appearance was unauthorized and the cause fictitious. Sundry other persons, who are not parties to the suit, and only two of whom claim any interest in the land, and an attorney appearing for the State of West Virginia, but employed also by the moving appellant (p. 2 of Petitions and Exhibits), also file petitions by which they ask the same action, and also the disbarment of the counsel for plaintiff and appellee upon the same ground, and because, they say, the suit is collusive, a fraud upon the court, involves no controversy, but was brought for the sole purpose of obtaining from the court a ruling and opinion to be used against them in litigation pending or that might arise. Affidavits, records, and other documents have been filed in support of and in opposition to said motions and petitions.

However viewed, this is an unusual case, and . . some respects probably is entirely unique.

The petitioners, the principal ones of whom had not sued or been sued by King, had, according to their avowal, long maintained an espionage over King, his counsel and agents and his cases in every court in the State, and failing, as they now claim, to notice the pendency of this suit, but more probably failing to appreciate the character of it, for which they seem to blame counsel therein, until it had been ordered for oral argument, they first apply for and get leave to file briefs in this court. Then an examination of the opinion of the learned judge is

made, the conclusion reached that its law and logic are irrefragable and sure to meet the approval of this court, and thereupon it is determined that in some way and by any means and at any hazard the case must, if possible, be pulled out of this court, and the affirmance of the opinion of the circuit court and the establishment of a precedent prevented.

In this emergency recourse is had to the special talents of John A. Sheppard. He has Mrs. Hatfield brought to his office and begins operations. Sheppard knew perfectly well what lands the suit affected, and that they were not the tracts upon which the appellant lived, yet he told her "that she would certainly have to move off if the Supreme Court of the United States sustained that decision" (p. 38). She was not sufficiently terrified, and thereupon he told her he "wanted to give her to understand plainly that the course she was taking in the case was establishing a precedent that would act to the prejudice of her neighbors and all others owning land inside the King claim."

Ex pede Herculem. It is easy to imagine the many threats of ostracism and other terrors and inducements resorted to that Mr. Sheppard did not deem it needful to report. He does not say, either, that in the absence of her counsel and without his knowledge he tried to engraft himself and associates upon the case as her counsel, but this appears from her letter to Major Flesher concerning this same interview (p. 49, Affidavits in Opposition, &c.).

This interview being unproductive of anything to the advancement of the plans of Sheppard and his associates, he sent Crocket Allison, a neighbor and one of the petitioners, after her, and in the course of a month or two she was

persuaded that she had nothing to hope for from appeal, and that the only way to save the land, even her home, that was not involved, but which she was led to suppose was included in the decree, was to make such an affidavit as Sheppard wished, and as would, he hoped, reverse and annul the whole case without going into the merits, and thus avoid a dreaded expression of opinion by this court, and at the same time eliminate from all future contests with these petitioners the principal counsel of Mr. King. This she was willing to do, if Sheppard's clients would guarantee her against failure of the plot, by agreeing to pay her for the land in event of its loss. Sheppard seems to have hesitated, but the others did not, for he says: "Afterwards I had a conference with associate counsel, and it was decided that I should obtain an affidavit from Mrs. Hatfield setting forth the agreement between her and Stiles, the representative of King, which I did on the 30th of September, 1901. *When she gave me the affidavit, I gave her a letter bearing the same date.* A copy of the letter is hereto attached" (p. 39, Petitions, &c.). A copy of the letter is *not* attached nor otherwise exhibited, but it is to be hoped, though it is not believed, that it creates more liability in favor of Mrs. Hatfield than does their Exhibit 25 (p. 106).

Such is in brief the petitioners' own account of the procuration of the affidavit upon which they, dripping and dribbling with corruption, come into a court of equity to make a charge of fraud against the appellee and of professional misconduct against counsel in the case. It is safe to say that no court was ever before treated to such a spectacle, and yet the diabolical humor of it seems to be wholly lost to the performers.

ARGUMENT.

The petitioners ask to intervene "not for the purpose of becoming parties to the above-entitled cause," but to prevent this court from rendering any opinion on the merits, upon the ground that such opinion may be used to their injury. This presumes that, in spite of any aid their counsel may give the court under its leave, the court will decide erroneously, for a correct decision can injure no one. The court will not adopt this presumption. They profess to fear that the court will give "the expression of such opinion or the determination of such facts as will operate as a complete bar" to their defenses in other suits.

It is not shown and it is not perceived how the court can determine any fact in this case that will bar Stuart Wood *et als.* if they keep out of the case, and the court will not withhold an opinion upon a question of law in this or any other case for the reason that it may become a legal precedent, an incident of every decision. If with them the facts are different, the precedent will not apply; if similar, they will have the benefit of the precedent. It is not believed that this court will humor the notion that Mr. King or any other person has no right to go into court with an adverse claimant except at the time, in the manner, and under the conditions that other independent adverse claimants may undertake to prescribe.

SUIT NOT FICTITIOUS, COLLUSIVE, FRAUDULENT, OR OTHERWISE IMPROPER.

The accused persons have not been content with a simple denial of the charges made against them by the petitioners, but have frankly and fully laid before this court, as it had been before the circuit court, a history of the whole case and all antecedent and surrounding circumstances, without regard to the effect, but in the consciousness that no impropriety existed in any of their acts. It is a distinct disappointment that certain of the opposing counsel did not justify their high repute for candor and fairness by a prompt recognition of the absence of turpitude in the conduct and purposes of the accused counsel, to an honest belief in whose baseness they might have been misled by false representations.

THE CASE NOT FICTITIOUS.

The complainant King is certainly no myth. The defendants are veritable beings, of full age and *sui juris*. This court has had previous evidence of the existence of the land claimed by the plaintiff, and no doubt can be entertained of the reality of his claim to it; and neither the defendants nor the petitioners for them have disavowed claim to the lands the bill says the defendants claim. The controversy over the land began a long time before this suit did, and seems to have some activity yet. Every element is substantial and real. But the petitioners say that King has agreed to give back the land after having won it, and they offer in proof of it the state-

ment of Mrs. Hatfield of an agreement made in 1895, the only agreement that it is pretended was ever made between her and any representative of King, or at least of which any evidence is offered. The agreement made at that time was lodged in court in the case to which it had special reference, and speaks for itself, and speaks of other land than that concerned here. It is not pretended that it had anything to do directly with this case, which was not brought till long afterwards, or that Mrs. Hatfield had any other agreement with any one about this case. The petitioners say she didn't know of the case until they told her. No agreement is referred to anywhere in the *evidence* except the one in 1895.

Mr. King may not have been represented by "able, efficient, and vigilant counsel," but his representatives have been counted men of ordinary sense, and the "brief for petitioners" says that one of them is an "intelligent, experienced lawyer." The question whether it is probable that any of them, aside from any higher consideration than common prudence, would go to an adverse claimant, a defendant in a pending suit, and make such preposterous statements and put up such a clumsy "job" as the affidavit of Mrs. Hatfield sets out, is a question that could well be submitted without denial or explanation; but the affidavits of Wilder and Shumate assert that the only agreement, except the release of some timber, that was made, and the only understanding that was had, was embodied in the written stipulation. Wilder, Shumate, King, and Stiles deny any knowledge of any agreement or understanding except the written stipulation.

The suit is as much a reality in every element and partic-

ular as ever was brought in any court, and there is a total want of evidence or ground of suspicion to the contrary.

NOT COLLUSIVE.

No evidence, direct or circumstantial, is offered by the petitioners in support of the charge that the suit was or is collusive, and, on the other hand, it is said by the complainant's counsel that "no previous consultation or communication or subsequent agreement was had with the defendants or their counsel" (p. 11, Stiles' affidavit); and the counsel for defendants says:

"I had no communication with M. F. Stiles or any one representing King about the present case prior to the time when said Stiles informed me he had brought this suit. I had nothing to do with the bringing of the suit and no knowledge or intimation prior to that time that such a suit was comtemplated, and I was not 'procured' by him to appear thereto; * * * and any statement wherever made, that I entered into any collusion with any person, or sought to impose on the court * * * or that the case was, so far as I am concerned, fictitious or manufactured or in any way unreal, is without any basis of fact or truth whatever."

A suit is not necessarily collusive because opposing counsel do not undertake to get each other disbarred or to assassinate each other's character.

NOT FRAUDULENT.

The suit not being fictitious or collusive, it would seem to follow that it was not otherwise fraudulent; but the petitioners imply that it was a fraud in King not to sue Henry R. Phillips on account of an alleged claim to the coal under-

lying part of the land. This assumes that Mr. Stiles knew of him and his claim, which he did not, and that failure to sue him was for the purpose and had the effect of wronging some one, which it could not. Who and where Phillips was or is Mr. Stiles does not yet know, and he was no more a necessary party than if he had claimed adjacent instead of subjacent land, if in fact he did. He was not a party to the action of ejectment, but no objection has been made to that.

It is urged that the court of equity is without jurisdiction because the defendants were in possession, though alleged to be out of possession. This was a traversible allegation, but it was made in good faith, and the demurrer admitted it. Moreover, it was true, and is not shaken by the general statements of the defendants or others, that the defendants had lived on their lands for thirty years, the house and buildings and farm lands on which they had lived being on other and different tracts. If it should even be that the defendants' counsel made a mistake in fact or in judgment in resting his case on some other defense than possession, to reverse the decree for that reason would put a premium upon bad judgment and the omission of proper defenses.

The stipulation with the defendants could not have been fairer or more clearly advantageous to them, if we go back to that, and, if we do not, then there was no dealing with them at all, foul or fair.

In the "Brief for Petitioners" (p. 2) it is said: "Mr. Stiles does not deny that he did not have with Mrs. Hatfield the conversation recited in her affidavit." And the counsel complain that the denial is not explicit. This is either a misapprehension of Mr. Stiles' statement or is not a candid treatment of it. The only conversations or agreements

which the said Hatfield pretends ever to have had with Stiles, and the only one anywhere mentioned by her or any other witness, and the only conversation, time, or place to which his attention was in any way called, was the conversation alleged to have been had with him and Shumate at the said Hatfield's house "about the time the declaration in ejectment was served on her," which was prior to the first Monday of March, 1895, the return day of the declaration, and again about two months later. The stipulation was filed in court about the time it was signed, June 15, 1895.

It was the intention of Stiles to make his statement both general enough and specific enough to cover the whole subject, and this is what he said upon that point:

"That with the making of said stipulation *or of any agreement* with the appellants or either of them this affiant had nothing to do beyond making a draft for same, to be submitted to them or their counsel, and signing same (if at all) after the same had been signed by the other counsel, and the said appellant, Hatfield, *in every statement concerning this affiant* in her affidavit exhibited with the petitions aforesaid, is profoundly in error; for this affiant never in his lifetime up to the present moment was at the house of said Hatfield in company with said H. K. Shumate, was never in her presence anywhere with said Shumate, never was on said Ben creek, where she lived, with said Shumate, and to the best of his knowledge had never seen her until after the stipulation was filed in court, nor had any communication with her of any nature upon any subject whatever, *and this affiant knows nothing of any agreement or any negotiation for same* with said Hatfield other than is herein stated and what he learned from said Shumate and V. A. Wilder, whose affidavits will be presented herewith, and said Hatfield never met said Flesher anywhere at any time pursuant to any arrangement with this affiant."

The suggestion of counsel that possibly Stiles saw said Hatfield at some other time and place than that stated by her is not warranted by any statement of any person on either side of the case. Attention is called by petitioners' counsel to the admission of Stiles that he had been at the Hatfield house; but the affidavit states that he stopped there as a traveler, which explains itself to any one who knows that it is one of the customary and few places where travelers from Tug River to Logan Court-house stop for food and shelter for man or horse, and the occasion mentioned was long after the filing of the stipulation, and no reference to any business matter was made.

After the affidavits in opposition to the petitions were filed three so-called affidavits in rebuttal were filed by the petitioners. These are not in rebuttal, but are part of the petitioners' primary case, and were sworn to before any of the affidavits in opposition were drawn, and should have been filed before or not at all. They escaped attention until opportunity to move to strike them out had passed. I therefore take occasion and the liberty to say now, in the first person singular, and under the sanction of my oath as an attorney of this court, that neither at the time or place mentioned nor at any other time or place did I ever see or have any conversation with Mrs. Hatfield in the presence of H. K. Shumate, and was never nearer to her with him than five miles, to my knowledge, except when Mrs. Hatfield and Mrs. Rutherford came up to Parkersburg to court after the filing of the stipulation, up to which time I knew neither of them by sight and at which time I spoke to neither; and never at any time or place did I make statement, representation, or agreement to Mrs. Hatfield or any other

person bearing the remotest resemblance to anything stated in her affidavit. I do not know either Aley Browning or T. H. Graham, and I never saw either of them to know who they were, if I ever saw them at all. In 1894 and 1895, Wilder and Stiles were interchangeable terms, and both were strangers to most of the people of Ben Creek country. Their business and interest were the same, only their personalities being different, and they were not always differentiated. After 1895 Wilder returned to New York and the former duality became Stiles alone, who remained in the State and continued to be known. If it is worth while to account for the statements of Hatfield, Browning, and Graham on the basis of honest mistake, it can probably be done by the tendency to attribute all acts of either Wilder or Stiles to the latter, the *surviving* member of the combination.

As to the affidavit of Crocket Allison, it may be said that it is not strange that the affidavits of Sheppard and Mrs. Hatfield should be thought to require reinforcement in advance of attack. It is entirely probable that Mrs. Hatfield said to Sheppard what Allison says she did. He knew what Sheppard required of her and undertook to deliver it when he brought her back to Sheppard.

FRAUD UPON THE COURT.

One ground upon which the intervenors ask that this suit be dismissed is, "Because this suit is a fraud upon and a contempt of this and the circuit court."

This does not seem worthy of discussion. If there was no fraud upon or contempt of the circuit court, there is none upon this court. If they have any faith in their position,

let them make their complaint to Judge Jackson, who knew every detail of the case and of the previous relations of the parties, who had all the papers and the counsel before him and knew how the suit was brought and how conducted, who knew and knows the counsel long and intimately in their personal and professional characters and conduct, and who gave to the case the labor and the careful, elaborate, and learned consideration not likely to be bestowed upon a moot case and an academic question or a case that was tinctured with fraud.

THE EX-ATTORNEY GENERAL.

When the court directed the attorney general of West Virginia to be notified of the pendency of this appeal, Mr. Rucker, who had yet three weeks to serve and who was counsel for sundry claimants adverse to Mr. King, saw, as did his co-counsel and their clients, some of whom were members of the legislature then in session, an opportunity for "great moral effect" (the imagined result of many immoral acts), a good fee for Rucker, and a chance for all the lawyers who were opposed to King, or at least "such other counsel as such board (of public works) may see fit and be able to secure without any expense to the State," to come into the case with the prestige of counsel for the sovereign State of West Virginia, whose real interest is on the side of King, and so a resolution of the legislature to that end was procured. But the ostensible purpose and the authority given was not to dismiss the suit or disbar the counsel, but to present arguments in favor of the constitution. That being an unpromising task, Mr. Rucker examines the *ex parte* affidavits procured by his as-

sociates, makes no inquiry about the case from the counsel in it, concluded it would be "improper" for him to write a brief, for which he was supposed to be employed, and joins gleefully in the general hunt for the "scalp" of his opponent in numerous cases. He hasn't a word either for the State or for the appellant, Mrs. Browning, who says she has employed him. His one purpose is the crime of Cain, "that primal, eldest curse, a brother's blood."

AUTHORITY OF FLESHER TO APPEAR FOR THE DEFENDANTS.

In March, 1895, the action of ejectment of King *vs.* Altizer *et als.*, including both the appellants, was brought, and both the appellants were served with process therein, and James H. Ferguson entered appearance and plea for them and other defendants. By the service they were brought into court and had at least constructive notice, if not actual knowledge, of every subsequent act therein affecting them. After the talk between them, or Mrs. Hatfield, and Mr. Shumate and Colonel Wilder, Mrs. Hatfield and Major Flesher met on the railroad train, and she asked him "to represent her and her daughter, Mrs. Rutherford," and later sent him their papers (p. 42, Flesher's affidavit). Thereafter the stipulation signed by him as their counsel was filed in the case. Of this they had not only notice, but actual knowledge and gave approval, for when it was called in question by their codefendants not only did they refuse to retract it or disown Flesher as their counsel, but went to Parkersburg in support of it (p. 43, affidavit of Flesher; p. 25, affidavit of Wilder; p. 21, affidavit of Shumate). The withdrawal of Ferguson as counsel for them by special order (p. 29) is confirmatory evidence of their appointment and

recognition of Flesher as their counsel, and it is not easy to see how it could have been more complete. It is not in the least degree probable that they did not know the nature of the stipulation, but it is not in the least degree material whether they did or not.

The stipulation was never canceled, the case is still pending. Flesher has all the time been their counsel of record therein, appointed, ratified, and approved by them, as aforesaid, and his authority therein not questioned nor revoked by them.

That was the situation at the time the present suit was begun and the appeal taken and submitted, and while Mrs. Rutherford (or Browning) had been less active in the matter than Mrs. Hatfield, who acted for both, her appointment and recognition had been no less complete. Forms of action meant nothing to them, and their manifest and necessary intention was that Flesher should represent them in the King litigation.

Mark what Mrs. Hatfield said to Sheppard when he first attempted to foist himself and his associates upon her: "Mr. Sheppard wanted me to let him and others to be my attorney. I told him I had a lawyer to tend to my business"—not to attend to "King *vs.* Altizer *et als.*," nor even the present case only, but her "business."

"He wanted to write to you that I wanted you to take another lawyer to help you. I told him no, I would write to you myself, and if you wanted another lawyer it would be all right with me. If you want one, you be your own judge about the matter" (Mrs. Hatfield's letter to Flesher, p. 49).

More plenary authority a lawyer never had, so far as Mrs. Hatfield is concerned; and when we consider that this letter was written from the common home of Mrs. Hatfield and Mrs. Rutherford-Browning in February last, after the talk Sheppard had made about the case to Mrs. Hatfield; that during the months following, while Sheppard and Crocket Allison were at work on them, no word of disavowal or disapproval of Flesher's authority or acts had been made to him or to any one else, and not until after Mrs. Hatfield had been induced to make her affidavit of September 30—when we consider all this in connection with the employment and support of Flesher in King *vs.* Altizer *et als.*, we must conclude that Mrs. Browning regarded Major Flesher as her counsel, and that he was such, and that the affected surprise and indignation of her letter of October, 1901, to Rhodes was a made-to-order part of the subsequently devised plan of campaign.

That Flesher had authority to appear for both in the action of ejectment is beyond question; that he had the direct authorization of one of them, a cotenant, to prosecute this appeal, and approval of his appearance in the circuit court is likewise so beyond question that no motion is made in her behalf. As to both the defendants, the employment and authority as counsel originally given and still subsisting must be held, under the circumstances of this case, to extend to a suit between the same parties, in the same court, involving the same subject-matter and the same questions—the identical controversy.

An appearance by authorized counsel is as effectual to give jurisdiction of a party as the personal appearance of such party, and the appearance of either cures defects in or

want of process (Hill *vs.* Mendenhall, 21 Wall., 453; Pollard *vs.* Dwight, 4 Cr., 421; Creighton *vs.* Kerr, 20 Wall., 309), and if the authority of an attorney can be inquired into upon appeal, when the question was not raised in the court below, conclusive evidence ought surely to be required before a party or a stranger can be permitted in that way to annul a judgment or decree. It ought not to be done on motion and on purchased affidavits of ignorant people, drawn by counsel moved by the purposes disclosed in the present case.

There would be no safety to opposing parties if reliance could not be put upon the presumed authority of counsel.

In Osborne *vs.* Bank of United States, 9 Wheat., 739, Mr. Chief Justice Marshall for this court well says:

"Certain gentlemen first licensed by Government are admitted, by order of court, to stand at bar with a general capacity to represent all the suitors in the court. The appearance of any one of these gentlemen in a cause has always been received as evidence of his authority; and no additional evidence, so far as we are informed, has ever been required. This practice we believe has existed from the first establishment of our courts, and no departure from it has been made in those of any State, or of the Union."

An attorney is as much an officer of the court as is the marshal, and equal recognition of the verity of his acts is daily given by the courts.

The jurisdiction of the court over the parties is always one of the first subjects of inquiry and must be presumed to have been examined into by the court, and where it depends upon the authority of counsel the court must be

presumed to have satisfied itself upon the matter before proceeding further and to have judicially settled the question.

"The presumption that the powers committed to a judicial tribunal of general jurisdiction have been properly exercised is essential to the repose and safety of society, and the inconvenience of allowing it to be met and overcome by parol evidence is greater than any benefit that can be derived from a different source. Public safety demands that when such a tribunal has pronounced a judgment *its adjudication of that subject should be as conclusive on the question whether the defendant was duly notified as on any other point essential to the determination of the cause.*" *Preston vs. Kindrick*, 27 S. E. Reporter (Va.), 578.

"The essence of estoppel by judgment is that there has been a judicial determination of a fact; and the question always is has there been such determination, and not upon what evidence, or by what means was it reached." *Last Chance Mining Company vs. Tyler Mining Company*, 157 U. S., 683.

The question concerning the effect of the appearance by an attorney whose authority was afterwards questioned came before this court in *Hills vs. Ross*, 3 Dallas, page 331, decided in 1796.

This was an action in admiralty, in which Joseph Clay, Jr., filed a plea for Ebenezer Hills, "one of the company of Hills, May & Woodbridge, in behalf of himself and his said copartners," the defendants. The replication treated this plea as that of the company, and the rejoinder was signed by "*Joseph Clay, Jr., proctor for the defendants.*" The decree below was against all the defendants, and a writ of error was sued out in all their names; but there was evidence on the record that May had been in Europe dur-

ing the whole proceedings, and no warrant of attorney or other authority to appear for him was produced.

It was contended by defendants in error that partners had no power to appear for each other in suits, and that in fact nothing appeared on the record to show that they had done so in this suit. The plaintiffs in error relied upon the rejoinder, where the proctor states himself to be employed by all the defendants, and insists that his authority cannot be examined in this stage of the case and this form of objection.

The chief justice delivered the opinion of the court, that in the present case *there was sufficient appearance of the defendants.*

In the case at bar the defendants claim as tenants in common, and the authority given by one of them is beyond all possible dispute.

In Shelton *vs.* Tiffin, 6 How., 163, relied upon by petitioners, it was held that the appearance of counsel, who testified that his appearance for L. P. Perry was an inadvertence, was an act of the counsel and not of the court, and did not contradict, but explained, the record; but the court said, "Had the entry been that L. P. Perry came personally into court and waived process, it could not have been controverted" (p. 186). It could not have been controverted simply because it would have been a fact judicially determined.

In this case the entry in one order is: "This day came the parties, by their counsel, and the defendants, by their counsel, tendered their joint demurrer," &c. (p. 23 of record).

The entry in the decree is: "This day came again the parties in open court, by their respective counsel, and the

defendants, by written waiver herein, declined to make answer to complainant's bill," &c.

These entries are acts of the *court*, and judicially determine the fact that the counsel tendering the demurrer and the counsel otherwise appearing for the defendants *was their counsel*, and is as incontrovertible as if it had been stated that the defendants came in person. It matters not "upon what evidence or by what means it was reached" (Last Chance Min'g Co. *vs.* Tyler Min'g Co., *supra*), the fact of the appearance of the defendants is as much adjudged and determined by the court as is any other question in the case and should only be reviewed here upon the record as it was made in the circuit court. If that question can be opened up and reheard upon new evidence in an appellate court there would seem to be no reason why any question in any case cannot be tried *de novo* and *ab initio* upon appeal and the distinction between appellate and original jurisdictions destroyed.

If the appellant Browning has suffered any injury her remedy is not by motion.

This court is a court of review and takes the case as the circuit court left it, upon the record as it was before that court. Mr. Flesher was and is an attorney and officer of that court and of this, and his acts within the customary scope of such attorney are entitled to every presumption of authority, right, and propriety, and the record suggests nothing to the contrary; and, it may be further said, the proof offered in this court shows nothing to the contrary. If, however, his appearance for the said defendant was without authority and was to her injury, or any act or omission of his was to her injury, he alone

should answer for that in damages to the extent of the injury, to be determined in an action against him. To annul the plaintiff's decree would be to visit upon the plaintiff a penalty for the acts and fault of opposing counsel. That would submit litigants to desperate hazard, and encourage the denial by the losing party of authority to his counsel, which it would seldom be possible for the prevailing party to establish. It would never be safe to prevail in the trial court.

If any attack upon the decree itself is open, it seems plain that it can only be for fraud of the plaintiff, and must be by independent bill in a court of proper original jurisdiction, where full hearing may be had and the witnesses subjected to examination. These propositions seem so plain as to need no citation of authority in their support, and, in the short time afforded for the purpose and in view of the evidence, no search has been made for them.

The petition should be stricken out and the motion overruled.

No doubt exists of the power of this court to dismiss an appeal, without disturbing the decree, when it properly appears that the controversy has terminated, such being the nature of the cases where the power has been exercised; but it is unnecessary to inquire what its power would be, or what action it would be proper to take upon the suggestion of a party or a stranger, in a case such as the petitioners in this case state, for no such case exists. It is submitted that, upon the record of the circuit court and the affidavits filed in this court, this case presents no feature different from ordinary causes, either in the circuit court or in this court, except the remarkable assault of the intruding petitioners

upon everybody and everything that does not meet their approval or serve their interests, and the extraordinary means and methods to which they confess they have resorted to procure evidence in support of their false assertions and false clamor and their effort to put a muzzle on this court; all which, it is submitted, ought to debar them even from representation in the consideration of the merits of this case.

The court is invited to examine the record from the circuit court, particularly the bill and the opinion of the learned judge (in the 14th line of which "1899" should read 1859), in connection with the affidavits filed in opposition to the petitions.

It is said that the present clerk finds no order approving bond and allowing appeal, but such order is found at page 45 of the record, certified by the then clerk of the court, and it is presumed that record is a verity that cannot be impeached by the failure of a successor in office to find the entry of it.

It is to be observed that there is no motion simply to dismiss the appeal, which the appellants would have the right to do, leaving the decree undisturbed, but the proposition is to quash the decree, and no motion whatever is made by one of the appellants.

It is submitted that upon the whole record every charge of fraud, fiction, collusion, or improper conduct against counsel of either party in the circuit court or this court, or of the plaintiff and appellee, or any representative or agent of his in either court, is fully repelled and shown to be wholly and wickedly false, and that the petitions and motions ought to be dismissed.

Respectfully, MAYNARD F. STILES.

No. 221.

Affidavits &c.

DEC 3 1901
JAMES H. McKENNEY,
Clerk.

Filed Dec. 3, 1901.

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vs.

HENRY C. KING, APPELLEE.

AFFIDAVITS AND EXHIBITS IN OPPOSITION TO PETITIONS AND MOTIONS OF NANCY C. BROWNING, STUART WOOD, AND OTHERS.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1854

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APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

The appellee, in opposition to the motion of Nancy C. Browning, presents the affidavits of Maynard F. Stiles and exhibits therewith; the affidavits of Henry C. King, V. A. Wilder, H. K. Shumate, and E. L. Buttrick, and the affidavit and exhibits of Henry C. Flesher, and says that no ground for said motion exists, but if she has any cause of complaint the same is properly cognizable in a court of original jurisdiction and upon original bill.

MAYNARD F. STILES, *Counsel.*

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

Now come the appellee, Henry C. King, and his counsel, Maynard F. Stiles, in opposition to the several petitions and motions of Stuart Wood *et als.*, Arthur D. Bright, A. M. Toler, and Edgar P. Rucker appearing for the State of West Virginia, and present the affidavit of Maynard F. Stiles and the exhibits therewith, the affidavits of Henry C. King, V. A. Wilder, H. K. Shumate, and E. L. Buttrick, and the affidavit and exhibits of Henry C. Flesher, and say that none of said petitioners was a party to said suit in the circuit court or is bound or affected by the decree appealed from or legally interested in the reversal or annulment thereof or entitled to the action prayed for, and any interest they or any of them may have or feel in any question of law arising on said appeal is fully protected by the leave heretofore given counsel to file briefs herein.

MAYNARD F. STILES, *Counsel.*

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

Affidavit of Maynard F. Stiles.

Maynard F. Stiles, being duly sworn, doth say:

That he, affiant, is and ever since 1893 has been the attorney, counsel, and solicitor of said Henry C. King in all suits and matters affecting the interest of said King in West Virginia.

That in view of the extraordinary character of the petitions presented in this cause in this court and of the grave personal consequences sought to be brought upon this affiant, and in order that this court may be fully advised of the situation, interests, conduct, and purposes of the several parties and their counsel as bearing upon the questions presented by said petitions and motions, this affiant is advised that it is proper to state the facts connected with the matters referred to in said petition or suggested thereby, as well as

the facts more directly material to this case, and therefore affiant says:

That when the said King purchased the Morris 500,000-acre grant he had no knowledge or information of any claim or contention that said land was forfeited, nor knowledge that any law or pretended law for forfeiting land existed, having made said purchase upon an abstract of title or examination made by an attorney who was unfamiliar with the provisions of the State constitution upon that subject; but when this affiant, who had had no connection with the said transaction, nor with said King until after said purchase, came to West Virginia to attend to the adjustment of such legal matters as might arise, he encountered the claim of forfeiture for non-assessment of taxes. He also discovered that within the five years next after the redemption in 1883, mentioned in the bill, and before any claim of forfeiture was or could be made, L. D. Chambers, commissioner of school land of Logan county, one of the petitioners herein, with Stuart Wood and others, had sold 150,000 acres of said land or more as waste and unappropriated land, in proceedings universally admitted to be void. Several thousand acres of said land, sold by him to himself and wife, said Margaret L. Chambers, petitioner, is now claimed in part by attorney and petitioner, C. W. Campbell, and a large portion of the rest of said land by the other said petitioners.

That about the time aforesaid, in 1893, a suit was instituted in the name of the State in the circuit court for Logan county against said Morris grant for the purpose of selling same for the benefit of the school fund, under the act of February 27, 1893, upon the ground that the title to said grant was, by forfeiture, then vested in the State, and John A. Sheppard, whose shameless account of the manner in which he professes to have suborned one of the appellants herein is exhibited with said petitions, was the attorney of record for said State, appointed by the commissioner of school lands, and was

also then, as now, one of the counsel for sundry of these petitioners and others, not parties to said suit, but who made claims hostile to said King.

That upon becoming cognizant of said suit said King, by affiant and H. K. Shumate, his attorneys, and V. A. Wilder, his agent, appeared and announced the desire, intention, and readiness of said King to pay the taxes on said land and be relieved of any claim of the State thereon, and his intention forthwith to file his petition to that end in said suit; whereupon, on the 9th day of January, 1894, the said Sheppard, in order, as affiant believes, to prevent such payment and to frustrate redemption by said King and his recovery of said land from said invalid claims, caused said suit to be dismissed.

That upon the dismissal of said suit being brought to the attention of the commissioner of school lands of Wyoming county, the suit mentioned in the bill was, at his instance, instituted in the circuit court for Wyoming county in May, 1894; whereupon the said Sheppard, in order to have the proceedings against said land under his control, to the end, as affiant believed and believes, that he might, in the interest of some of the petitioners herein, delay as long as possible redemption and payment of taxes by said King, caused the suit, that a few months before he had for the same reason dismissed, to be reinstated in said Logan circuit court, and in conjunction with C. W. Campbell, attorney and petitioner herein, and with the counsel for Stuart Wood, and the counsel for the Kountze Brothers, who are the real parties in interest, as affiant is informed, in a large quantity of land of which sundry of the "trustees," petitioners herein, are the ostensible claimants, and with the counsel for sundry other of the present petitioners, hastened to the said court for Wyoming county, and as "friends of the court," and without appearing in any way upon the record, harangued the court to dismiss said suit because of the pendency of the suit in Logan county, none of the persons

mentioned being party to either suit, and, failing to procure a dismissal of said suit, succeeded in having same remanded to rules for defect in the notice to the "unknown heirs" of one of said King's predecessors in title who had, as the records disclosed, parted with all title in his lifetime.

That the said King, by this affiant and H. K. Shumate, his attorneys, was ready at said term of court to file his answer and petition proffering and praying to pay all taxes and proper charges upon said land, notwithstanding said defective notice, and without regard to parties, and protested against the return of said cause to rules or any delay therein, but said cause was continued for the term; and at the next term, and at each succeeding term, sundry of the petitioners herein and the counsel aforesaid, without entering appearance for any person or disclosing any proper interest in said suit or putting themselves on the record, by interjecting objection of one sort and another occasioned continuance of said cause from term to term for more than two years, during which time four amended bills were filed, none of which related to any of said persons and accomplished nothing but delay to said King's effort to settle his taxes.

That in March, 1895, dispairing of making progress in said court against the guerrilla warfare waged against him, during which the land was being despoiled, and believing that there was no valid forfeiture of said lands, the said King instituted the action of ejectment entitled King *vs.* Altizer *et als.* in the circuit court for the district of West Virginia against a large number of defendants who set up claim of title to the greater portion of the land sold by the commissioner of school lands, as aforesaid, among the said defendants being the above-named appellants and M. B. Mullins, and Alexander McClintock who made pretense of a claim to a large portion of a 142,000-acre tract that had been forfeited to Virginia in the early part of the nineteenth century and had never been redeemed and was not in any way redeemable.

That the said King had paid a very large sum for said property and was under great expense about the same and desired the judgment of the court upon the rights and claims of the parties in the action he had brought to try title, and in order to present as simply as possible the paramount question of forfeiture, which was purely a question of law, before going into an expensive trial of the other leading question—that of boundary—the stipulation was entered into that is referred to in the bill (page 10 of the transcript) by which that question was to be argued and submitted. If the decision should be against the plaintiff it would preclude all other questions, but if for him the cause would proceed under the general plea of not guilty, and the plaintiff was to dismiss as to certain lands.

That with the making of said stipulation or of any agreement with the appellants or either of them this affiant had nothing to do beyond making a draft for same, to be submitted to them or their counsel, and signing same (if at all) after the same had been signed by the other counsel, and the said appellant, Hatfield, in every statement concerning this affiant in her affidavit exhibited with the petitions aforesaid, is profoundly in error; for this affiant never in his lifetime up to the present moment was at the house of said Hatfield in company with said H. K. Shumate, was never in her presence anywhere with said Shumate, never was on the said Ben creek, where she lived, with said Shumate, and to the best of his knowledge had never seen her until after the stipulation was filed in court, nor had any communication with her of any nature upon any subject whatever, and this affiant knows nothing of any agreement or any negotiation for same with said Hatfield other than is herein stated and what he learned from said Shumate and V. A. Wilder, whose affidavits will be presented herewith, and said Hatfield never met said Flesher anywhere at any time pursuant to any arrangement with this affiant.

That after said stipulation was filed in court some of the

other defendants in the case, who had sought to control the course of all litigation affecting said King and his land, whether parties to it or not, endeavored to induce the defendants, in whose names the same had been signed, to renounce the said *stipulation* and deny the authority of Major Flesher to act for them, and caused the rule and order to be entered that is presented with the petitions herein. Shortly thereafter, the counsel who had made complaint being in court, said Shumate stated to the court the circumstances of the making and signing of said stipulation, and the judge being satisfied therewith and declaring that he had "known Henry Flesher for a great many years (stating how long), and that he did not believe he had acted for the parties without believing he was authorized to do so," nothing was done under the rule, but so much of the stipulation as related to Claypool was stricken out by consent. Upon the filing of the declaration James H. Ferguson, Esq., had appeared and entered a plea of not guilty for all the defendants, but after the stipulation had been filed and agitated said Ferguson withdrew as the counsel of said Hatfield and Rutherford. (See order of court, hereto attached, marked "Exhibit No. 1.")

That, according to the terms of said stipulation, the question of the forfeiture of the plaintiff's title was set down to be argued in advance of the other questions in the case, and was thrown open to all comers (see order herewith, marked Exhibit No. 2), and under said order printed briefs were filed by this affiant and said Shumate and E. L. Buttrick, Esq., on the part of the plaintiff, and by sundry counsel in opposition, among them W. P. Hubbard, of counsel for the petitioners aforesaid, but the judge being prevented by illness from considering the question at that time, it was not taken up for decision until at the end of two long and expensive trials of the Mullins case, when it was disposed of without argument, upon the submission of an instruction by the defendants. The case was brought to this court by the

plaintiff, was submitted under rule 20, the submission was set aside by the court and oral argument ordered and notice sent to the attorney general of West Virginia, Mr. Edgar P. Rucker, who did not *then* think the State was concerned and who paid no attention to the case. In May, 1898, the judgment was affirmed.

That during the pendency of "King *vs.* Mullins" in this court and before the same had been ordered for oral argument, the said King, still willing to pay any taxes that were due the State, in June, 1896, filed his answer in the said suit in Wyoming county, denying the forfeiture, but offering to pay the taxes, and his opponents, being without other resources for further obstruction, filed a petition in said suit in the name of Alexander McClintock, who was not a party to said suit, claiming title to the Clinton 142,000-acre grant, denying the jurisdiction of the court over King and the Morris grant, and praying that King be not permitted to redeem, etc. Long before the filing of said petition all the real and other property, effects, and affairs of the said McClintock in West Virginia had been vested in Z. T. Vinson, as receiver appointed by the United States circuit court for the district of West Virginia (see page 86 of petitioners' "Petitions and Exhibits"), on the application of said McClintock, no mention of which fact and of the consequent incapacity of said McClintock to file said petition was made therein or otherwise by said McClintock or by said Vinson, whose name appears on said petition as counsel, with others, for said McClintock, and said petition was purely an obstructive expedient.

That in the fall of 1896 a stipulation was made on behalf of said King and said McClintock, and signed in their behalf by affiant and said John A. Sheppard, for the continuance of said cause of State *vs.* King in Wyoming county, the State not being a party to said stipulation, but in March, 1897, on the motion of the State, in the absence of this affiant and without his knowledge, but in the presence and

with the knowledge and without the objection of one of the counsel of record for said McClintock, an order was made to proceed with the cause; and in September following the decree of redemption exhibited with the bill in this cause was rendered.

That soon thereafter a suit was brought in said court, not in the name of said McClintock, but in the name of said Vinson as receiver, who had not been a party and was not privy to said suit of State *vs.* King, his appointment having been made and all his rights, if any he had, having accrued prior to the institution of said suit, to set aside said decree as having been procured by fraud upon said McClintock through violation of said stipulation and other alleged misbehavior of this affiant, every which charge of fraud was and is false, and upon said bill, upon an *ex parte* application, secured the injunction which, with the bill of said Vinson, the petitioners aforesaid have deemed material to their application and have set out as their Exhibit No. 19. The defendant King removed said cause into the United States circuit court, demurred to the bill, and, the demurrer being sustained, an amended bill, making a different but no better case, was filed, and the said King traversed the same by sworn answer, and up to the present term no action had been taken by said Vinson, receiver, to bring said cause to hearing.

That the said Sheppard and his associates, who had borrowed the receivership of Vinson for the purpose of bringing said suit, not being satisfied with the promise thereof in a Federal court, with the aid of said C. W. Campbell, and in the hope of embarrassing said King by disbarring his counsel, embodied the allegations of said bill and sundry other falsehoods and calumnies in an affidavit, upon which the judge of said Wyoming court, to whom it had been shown that some of his friends and relatives, though not parties to the suit of State *vs.* King, might be deprived of the defense of forfeiture, upon which they had previously relied, awarded

a rule against this affiant, and upon the hearing thereof, despite the total want of proof in support of any charge and full proof in refutation of every charge, entered the judgment that is recited in the petition of said Stuart Wood *et als.*

It would have saved this affiant the trouble of referring to this matter if said Stuart Wood *et als.* had been more explicit upon the subject, and had said that upon writ of error the supreme court of appeals, every member of which was personally well acquainted with this affiant and said Sheppard, unanimously reversed the finding and judgment of the circuit judge, because the evidence, and particularly the statements of the judge himself, disproved the charges, the court finding occasion to announce the rule that "the power to disbar an attorney is not an arbitrary and despotic one, to be exercised at the pleasure of the court or from passion, prejudice, or personal hostility."

The opinion of said supreme court of appeals in said cause (37 S. E., 620) and its judgment thereon are hereto annexed as Exhibits No. 3 and No. 4.

In harmony with the general course of the persons interested in the petition herein was the time and manner chosen for notifying affiant of their application to this court for his disbarment and degradation, the notice of said application being handed to affiant in the court-room of the United States circuit court of appeals by said Z. T. Vinson, who had concluded his argument in a case against said King, defendant in error, and just as affiant was about to begin his argument for said King.

That said proceeding was not instituted or conducted by any public authority, but exclusively by said John A. Sheppard and C. W. Campbell, aided, abetted, and assisted by one —— Ashbridge, the general agent of said Stuart Wood, and by one R. T. W. Duke, Jr., the general counsel in West Virginia of the said Kountze Brothers, the real claimants, as affiant is informed, of about 35,000 acres of said land, to which the apparent title adverse to King stands in the names

of those petitioners herein whose sham promise of indemnity to said Hatfield, to be made through said Sheppard, as the price of her false affidavit, is exhibited to this court as their "Exhibit No. 25." And affiant is advised that as against said persons at least the finding, judgment, and opinion of said supreme court of appeals are conclusive of the falsity and groundlessness of the charges against this affiant contained in the affidavit of said Sheppard in said proceeding.

That the said petitioners have failed to mention another instance of the systematic persecution to which they have subjected this affiant because of his efforts to protect and secure the rights of his said client. It is this: About the time aforesaid the commissioner of school lands of Logan county, J. W. Hinchman (one of the petitioners with Stuart Wood), had offered for sale a large body of land claimed to be within said Morris grant, under a decree that affiant deemed to be void, rendered in a proceeding to which neither affiant nor said King was a party or of which he had notice or knowledge. Affiant therefore brought a suit on behalf of said King in the United States circuit court to restrain said sale; whereupon the said State court, upon a rule for contempt, and to curb "the usurpations of the Federal courts," committed affiant to the county jail until said injunction should be dissolved; and affiant, refusing to dissolve said injunction, spent a week in jail before he could secure his release upon *habeas corpus* from the Federal court, during which time the prohibited sale was made; which release of affiant said Edgar P. Rucker and Z. T. Vinson opposed on the hearing of the writ.

A copy of the judgment of commitment and order of discharge are hereto annexed as Exhibts No. 5 and No. 6.

That it is true that an appeal from said decree of redemption of September 30, 1897, was taken to the supreme court of appeals of said State, notwithstanding the fact that said State had received and still retains the money paid thereunder by said King, which said appeal was

applied for, prosecuted, argued, and paid for by the petitioners herein and their counsel, but the same had not been applied for when the present suit was brought, though more than a year had elapsed since the decree was entered, and subsequently said decree was reversed, so far as it fixed the amount of taxes and so far as it permitted a redemption by reason of the payment of said amount, and was affirmed in all other respects; but the right to maintain said bill and the right to the relief prayed for did not in any degree depend upon said decree, which by its terms and the terms of the statute, construed as contended for by the defendants, could in no way affect them or their lands. The learned judge did not base his decision upon anything in the decree of redemption.

And affiant further says:

That this said suit was regularly brought and regularly proceeded in, and any statement to the contrary is not true and is an unwarranted reflection upon the circuit court. No previous consultation or communication or subsequent agreement was had with the defendants or their counsel, but, the bill having been filed, the recognized counsel of the defendants was asked by affiant, in view of the previous stipulation and in order to save cost, to waive process, which he did. The suit, while not within the terms of the former stipulation, was to such extent related to it as to suggest the propriety of calling the attention and recollection of the court to the former stipulation and proceedings by a direct reference thereto in the bill.

That it was the practice of the said court in which this suit was brought to make out before each term a docket of all pending cases, and to notify all attorneys having cases in said court several days in advance on what day all cases on the docket would be called, and all such attorneys were expected to be present, and this case was regularly on said docket for the two years that the same was pending in said

court, and was regularly called with all other cases. (See certificate of clerk, hereto attached as Exhibit No. 7.)

That this affiant doubts not nor denies, but is well aware, that the said Stuart Wood and his copetitioners "*are represented by able, efficient, and vigilant counsel,*" and that "*both they and their attorneys have been alert and vigilant in their efforts to acquire knowledge of all the proceedings of every description undertaken by Henry C. King and those who represent him for the recovery of any part of said Morris grant in any of said courts in West Virginia,*" whether the same concerned them or not, and have been "alert and vigilant" to pursue this affiant, his client, and his cause with false accusations and wanton aspersion with remorseless persistency and causeless malignity from court to court and case to case, breathing into the surrounding atmosphere of the courts, through every public or secret approach, the pestilential miasma of prejudice, in their efforts to demoralize and disarm said King; but this affiant is not advised that those facts impose upon affiant, whose habit it is to mind exclusively his own business, any obligation to notify persons not party or counsel in a suit of matters of public transaction in the courts, or that the failure of such persons, or or their able and vigilant counsel, to become acquainted with matters *inter alios* is ground for the subversion of the judgments or decrees of court therein, or for disbarment of counsel.

That Henry C. Flesher never was the counsel of Henry C. King in any cause or transaction in court or out of court, and, to the best and utmost of this affiant's knowledge and belief, never saw or had any communication with him, and in this case the said Flesher did not in any manner whatever represent said King.

That every averment in said bill was made in good faith, and this affiant believed them to be and still avers them to be true. The complainant had long been, then was, and still is in the actual possession, occupancy, and

enjoyment of said tract by his tenants and agents, except such parts as were or are in the actual adverse possession of others, which is not the case, as affiant was informed and believed and still believes, with those tracts claimed by the appellants that are affected by this suit. This affiant was not familiar with the lands claimed by the appellants, and had no personal knowledge of the particular location of any of the tracts claimed by said appellants, but he was informed before said suit was brought and at or before the time the stipulation aforesaid was made that there was and had been no adverse possession of any of the lands claimed by said appellants, *except such as are not affected by this bill,* of which latter tracts they undoubtedly did have possession. This affiant had never been on any of said tracts, nor on any other lands claimed by the appellants except in passing along the public road and stopping once or twice at said Hatfield's house as a traveler, at which time no mention of lands or any business matter was made, but he was and is informed that *all the buildings, improvements, and possessions of said appellants are wholly confined to the lands not affected by this suit.* If A. M. Toler claims any portion of said 330-acre tract, it cannot be told from the scrap of a deed he exhibits (page 65), nor does the deed to Phillips for minerals (page 76) make any reference to the tracts affected by the bill, and if it embraces any of them it does not so appear from the deed, and affiant had no knowledge of it, and said Phillips could not be in possession.

That said suit was not brought for any purpose not shown by the bill, nor by collusion or agreement, nor by any misrepresentation of fact; but every matter, fact, and thing was fairly, frankly, and openly put before the court and understood by the learned judge, who had long been familiar with complainant's title and with the whole transaction and all surrounding circumstances, and was received by him and long and carefully and learnedly considered. If the sole

defense to the bill is "fictitious," it is the defense upon which the petitioners aver that they wish to rely in their controversies with King.

That it is true that this affiant and his client desired the decision of the court upon the matter presented by said bill and upon the rights therein claimed; otherwise he would not have brought said suit. This affiant knows of no other way to determine litigated matters, and has always been as ready and anxious to submit his rights and claims to the judgment of the court as the intruding petitioners have been reluctant to do the like and anxious to avoid judicial test of their pretensions. But affiant denies every allegation and suggestion that said cause was improperly inspired or collusively concocted or had or has the purpose asserted by said petitioners, or that the same was or is in any respect fictitious or tainted with any improper or unprofessional act, practice, or design; and the opinion of the court, which affiant is charged with endeavoring to procure, was not reduced to writing until after appeal had been applied for, the learned judge then deeming it proper that the reasoning by which he had reached his conclusion should be fully stated. This affiant is willing that his conduct and purpose and those of his client in taking the judgment of the court on his right and claims should be compared with the methods of the petitioners and their counsel to prevent a decision upon the merits of a cause to which they are not party.

And concerning the matters and statements contained in the affidavit of John A. Sheppard, page 98 of "Petitions and Exhibits," this affiant says:

That he knows nothing of the whereabouts of the papers in the case of King *vs.* Altizer; that he never, to the best of his recollection, had them outside the clerk's office or the court-room and has no recollection of seeing them since some time in 1896, when he presented to the clerk a printed copy

of the transcript of King *vs.* Mullins and saw the clerk insert the same in said papers.

That if the papers in said case of King *vs.* Hatfield were kept out of the clerk's office at any time they were in the hands of the judge, who, upon submission of the demurrer, took the papers and retained the case under consideration for several months, and subsequently had them while writing his opinion.

That some time after the appeal in said cause had been allowed this affiant was at court at Parkersburg, where Judge Jackson resides, and upon returning to Charleston the said judge, having no further use for said papers, requested affiant to deliver them to the clerk at Charleston.

That on affiant's way to Charleston said Henry C. Flesher, attorney of the defendants, came aboard the train, and affiant spoke to him of the said appeal, and proposed a submission of said cause, as had been done in the case of King *vs.* Mullins, which was agreed upon, and as said Flesher was then on his way to Welch and the time for filing transcript and submitting the cause was short, said Flesher requested affiant to have the clerk get out the record at once, and in order to expedite the matter affiant furnished to the clerk copies of such of the papers as affiant, according to his custom, had preserved, and had copies made of the others and furnished the same to the clerk, and delivered to him the papers that had been transmitted by said judge, and the clerk hesitating to certify and forward the record without previous payment therefor, affiant offered to be answerable therefor if the appellants should refuse or fail to pay it. Affiant has not been required nor requested to pay it, and is informed by the clerk that it was paid by appellants or their counsel.

Affiant further says:

That since the decision of said cause the said King has in the proceeding had in said cause of State *vs.* King released the lands that under the stipulation filed in said cause of

King *vs.* Altizer said King agreed to dismiss from said suit, except surface rights upon one tract as well as more than five hundred tracts occupied and claimed by other persons, being all the occupied lands known to affiant in Logan, Mingo, and McDowell counties, but the same was done not because of said stipulation or any agreement, but because said King contested only for the wild lands.

That the said King has never brought any suit or action against the petitioners, C. W. Campbell, J. L. Caldwell, John Q. Dickinson, nor, to the best of affiant's present recollection, against said Stuart Wood, nor against said Egbert Mills, Egbert Mills, trustee; Arthur D. Bright, Arthur D. Bright, trustee; William H. Lawson, and William Kronenwelt, who are unknown in West Virginia, but are understood by affiant to be mere title-holders for said Kountze Bros.; but said persons and their vendors, having for years abused the process of the State courts in obstructing the payment of taxes by said King in suits to which they were not parties, and having reached the limit of possibilities and toleration as "friends of the court," in July last, and long after the setting aside of the submission of this cause, procured themselves to be made parties to said cause of State *vs.* King in the State court, and filed therein what they call answers, which are devoted to resistance to King's offer to pay the taxes on the land he claims, and to a claim of title adverse to said King to thousands of acres of land by virtue of his non-payment of taxes which they and their attorneys and agents have occasioned. These persons are the real petitioners herein, the others being united chiefly for show of numbers, and said suit of State against King is the one for the purposes of which they want this affiant disbarred and the decision of this cause upon the merits, in which they see no hope, withheld.

This affiant deeply deplores the necessity of referring, even in self-defense, to acts of counsel or parties in other cases that seem to him reprehensible, and he does so, not

for love of it nor for the sake of retaliation, but because, in his opinion, those acts have a legitimate bearing upon the force to be given to their present complaints, accusations, and criticisms, and throw a proper side light upon the astounding course and methods that they have the audacity to proclaim have been resorted to in behalf of the said petitioners in the present case.

This affiant refers to and relies upon the affidavit of Henry C. Flesher and the stipulation and letter thereto annexed, and the affidavits of Henry C. King, V. A. Wilder, H. K. Shumate, and E. L. Buttrick, herewith presented.

MAYNARD F. STILES.

Subscribed and sworn to before me this 2d day of December, 1901, in the District of Columbia and city of Washington. Witness my hand and official seal.

CORNELIUS ECKHARDT,
Notary Public.

Affidavit of Henry C. King.

DISTRICT OF COLUMBIA, *City of Washington*, } ss:

Henry C. King, being by me duly sworn, doth say:

That he is the appellee in the cause now pending in the Supreme Court of the United States, under the title "S. D. Hatfield and Nancy C. Rutherford, appellants, *vs.* Henry C. King, appellee."

That Henry C. Flesher, who appears as counsel for said Hatfield and Rutherford in said court and in the circuit court, is not now and never has been the counsel, solicitor, or attorney of affiant in said cause or in any other cause, transaction, matter, or thing, or his agent, at any time or for any purpose whatever, and never has been employed or retained as such, and has never rendered any services to

affiant nor to any other person whomsoever at the procurement or instance of affiant.

That the only agreement, arrangement, or understanding on the part of this affiant and said Hatfield and Rutherford or either of them ever authorized by this affiant or of which he has any information is the one filed in court and referred to in affiant's bill in the aforesaid cause.

That the only persons at any time authorized to employ counsel for affiant in any matter or for any purpose relating to affiant or his affairs in West Virginia are Maynard F. Stiles, his attorney and counsel, and V. A. Wilder, who has been an agent of affiant in and about the business affairs of affiant in Virginia and West Virginia.

That very soon after the trial of the cause of this affiant against M. B. Mullins, in the circuit court of the United States for the district of West Virginia, said Mullins being one of the defendants in the cause entitled Henry C. King *vs.* S. S. Altizer *et als.*, and about the last of January, 1896, the said V. A. Wilder returned to New York, and from that time until within three or four months last past remained continuously in and about New York, under affiant's observation, and, to the best of affiant's knowledge and belief, was not thereafter in the State of West Virginia, except for the period of three or four days in September, 1897.

HENRY C. KING.

Subscribed and sworn to before me this 26th day of November, 1901, in my district aforesaid, as witness my hand and official seal.

[SEAL.]

CHARLES L. BUNDY,
Notary Public, D. C.

Affidavit of H. K. Shumate.

STATE OF WEST VIRGINIA, }
County of Kanawha, } ss:

H. K. Shumate, being duly sworn, on oath states:

That he was one of the attorneys for H. C. King in the case of King *vs.* S. S. Altizer *et als.*, in ejectment, pending in the United States circuit court for the district of West Virginia.

Affiant states that some time in the year 1895, while said suit was pending in said court, it was deemed expedient by the attorneys for Mr. King that a decision be had upon the forfeiture question arising in said cause, apart from the other issues, at as early date as practicable, and there seemed to be a disposition upon the part of many of the defendants or their counsel to delay the same.

Affiant was called upon to select one or more of the defendants who also desired speedy trial and whose lands would involve such question of forfeiture to its broadest extent. Among those who desired such speedy trial and held diversified interests were Mrs. Sarah D. Hatfield and her daughter, then Mrs. Nancy C. Rutherford, now Mrs. Nancy C. Browning.

The affiant called upon Mrs. Hatfield and her daughter and proposed to them an early settlement of such question. At the time an injunction was in force against them, enjoining them from cutting and removing timber from the lands claimed by them, which timber they had contracted to another, one A. B. Crum, who was also exceedingly anxious to cut and remove said timber.

This affiant further states that he made an arrangement with said parties which was substantially set out in a stipulation filed with the papers in the cause of King *vs.* Altizer *et al.*, and which was the whole agreement, so far as this affiant remembers, made with them, except as to the timber

which Mrs. Hatfield and Mrs. Rutherford had sold to Mr. Crum. In this matter it was agreed that Mr. Crum could proceed under his contract and cut and remove said timber, and that they (Mrs. Hatfield and Rutherford) might receive the proceeds thereof to their own use. This action was induced to considerable extent by the representations made by Mrs. Hatfield of her pecuniary inability to make a separate defense. At Mrs. Hatfield's request this affiant suggested to her the employment of Maj. H. C. Flesher, as a competent attorney, who was well versed in land law and one who was not employed by the other defendants, from whom she would sever. She requested that affiant mention the matter to Major Flesher, which he subsequently did. At the time the affiant suggested the employment of Maj. H. C. Flesher he had not seen him, nor had any communication with him in any way, directly or indirectly, concerning such employment.

Affiant further states that he made no agreement or arrangement with Major Flesher for the payment of any fees as counsel for Mrs. Hatfield, nor has he any knowledge of any such arrangement being made by any one whatever. So far as this affiant is informed, Major Flesher was at no time in the employment of Mr. King or any of his agents.

After this affiant entered into said agreement with Mrs. Hatfield and Mrs. Rutherford, to satisfy them that such agreement would be faithfully carried out this affiant had Colonel V. A. Wilder, who was then the active agent for Mr. King, to accompany him to their house, and to assure them that the agreement that the affiant had made with them would be carried out in good faith. This said Wilder did, telling them that whatever affiant had agreed to should be done.

To the best of affiant's recollection, M. F. Stiles, Esq., then and now counsel for Mr. King, was not present at either of the times aforesaid, and that Colonel Wilder only was pres-

ent to sanction the agreement. He has no recollection that said Stiles was ever there with affiant at any time.

The affiant further states that some time after said stipulation was filed a contention arose at Parkersburg over the authority of Major Flesher to represent Mrs. Hatfield, Mrs. Rutherford, and William Claypool in the stipulation. To ratify such authority upon their part, Mrs. Hatfield and Mrs. Rutherford both came to Parkersburg. The portion relating to Mr. Claypool was stricken out, and as to Mrs. Hatfield and Mrs. Rutherford it was retained in force.

This affiant further says that his employment as active attorney for said King ceased in 1896, and he had no connection with the chancery suit of King *vs.* Hatfield *et al.*, brought in 1898.

H. K. SHUMATE.

Subscribed and sworn to before me this 25th day of November, 1901, in my county aforesaid.

Witness my hand and official seal.

R. S. SPILLMAN,

[SEAL.] *Notary Public of said County of Kanawha, W. Va.*

Affidavit of V. A. Wilder.

STATE OF WEST VIRGINIA, *County of Kanawha,* } *ss:*

V. A. Wilder, being duly sworn, doth say:

That he is fifty-seven years of age and a citizen and resident of New York.

That during the years 1893, 1894, and 1895 affiant was the agent of Henry C. King in and about his affairs in West Virginia, relating to the Robert Morris 500,000-acre grant.

That after the institution of the action of ejectment, entitled King *vs.* Altizer *et als.*, in the United States circuit court

in 1895, affiant and said King and his counsel became anxious for a trial thereof, which there seemed to be a general disposition on the part of the defendants to delay, as they had delayed and thwarted the efforts of said King to adjust the matter of redemption and payment of taxes on said land in suits pending in Logan and Wyoming counties, and affiant urged the counsel of said King to bring said cause on for trial as to some of said defendants as soon as the same could reasonably be done.

That H. K. Shumate, one of said counsel, being well acquainted with most of said defendants, informed affiant that he probably could arrange with certain of them to go to trial without unnecessary delay, among the defendants suggested being Mrs. S. D. Hatfield and Mrs. Nancy C. Rutherford, who had been enjoined from cutting timber on said land, and in pursuance of said suggestion this affiant and said Shumate saw said parties at their residence on Ben creek, in Mingo county, while passing through the country, and an agreement was arrived at for the trial of said cause as to said parties, the terms of which were embodied in a written stipulation afterwards filed in said cause of King *vs.* Altizer *et als.*, and said stipulation embodied the only agreement or understanding that was ever made or had between either of said parties and this affiant or any representative of said King of which this affiant has ever heard or has any knowledge or information.

That Maynard F. Stiles, the attorney and counsel of said King, was not present upon the occasion mentioned, and to affiant's certain knowledge was not acquainted with and had never met the said Hatfield or Rutherford at that time nor at the time said stipulation was filed in court.

That affiant has read a printed copy of the affidavit of said Hatfield, filed in the case of Hatfield *et al. vs.* King, in the Supreme Court of the United States, and believes that the conversation therein alleged to have been had with H. K. Shumate and M. F. Stiles refers to the conversation

with said Shumate and this affiant, as aforesaid, and not to any other.

That affiant or said Shumate stated that by the arrangement proposed the expense and labor of a trial of the question of title between them would be much lessened without loss of right or advantage to either party, and that in this way in no event could the home of the said Hatfield and Rutherford be jeopardized; and because the said Hatfield had, as she said, used up her available money in other litigation, affiant gave permission to remove and dispose of some timber that, as affiant now remembers, had been cut prior to the injunction.

That at the time aforesaid the opposition to said King had been syndicated by the large land claimants, such as the Kountze Brothers, of New York; Stuart Wood, of Philadelphia; J. A. Nighbert, and others, and their attorneys, who were opposed to any independent action on the part of any defendant or any person having claims or interests adverse to said King, and opposed to any action whatever that was not taken through or did not yield tribute to them, and the said Hatfield, seeming not to be well disposed towards the attorneys representing the said persons, and wishing to act independently of them, asked said Shumate who would be a good lawyer to represent her, and said Shumate suggested some man, probably Major Flesher, as a competent land lawyer. At that time affiant was not acquainted with said Flesher and the name made no impression upon affiant's mind.

That said Flesher was not then nor at any time before or afterwards the attorney of said King nor connected with him or his interests in any manner whatsoever, and neither affiant nor said Shumate so told said Hatfield or any other person, nor did they or either of them promise her to pay him, nor was he employed by said King to represent said Hatfield, nor did affiant or said Shumate tell her or any other person at any time that they or said King had certain

lawyers or any lawyers employed who would take cases for other persons and then work in the interest of said King, nor was such the fact.

That said agreement was made willingly and with apparently perfect understanding on the part of said Hatfield and Rutherford, the said Hatfield being anxious to make the same, and in good faith on the part of this affiant and said Shumate, and was faithfully set out in the written stipulation aforesaid.

That affiant has read a printed copy of the affidavit of William Claypool, filed in said Supreme Court, and this affiant says that no such conversation as is therein stated ever occurred, but the facts concerning the same are that said Shumate told the said Claypool that an arrangement had been made with some of the defendants for a trial of the King suit as to them, and that he would like to have some one from that part of the country go to trial at the same time and in the same way, which could be done at trifling expense, as the other counsel in the case would, while defending the case for them, necessarily have to defend it as to said Claypool, the questions involved being in substance the same, which was entirely true. Claypool readily assented, and it was agreed that the lands of which he had title by possession should be dismissed from the suit. No promise was made to pay his costs or his counsel, nor was any counsel of said King to appear for said Claypool.

That upon the filing of the stipulation aforesaid in the circuit court and upon the same becoming known to the attorneys of some of the other defendants, emissaries were dispatched by them, as affiant is informed and believes, to the said Claypool and to the said Hatfield and Rutherford, who endeavored by threats, intimidation, and other influence to induce them to repudiate said agreements and the authority of said Flesher to sign said stipulation. In the case of Claypool they succeeded, and he withdrew from the

agreement, but said Hatfield and Rutherford adhered to said agreement, and when the authority of said Flesher to sign said stipulation for them and said Claypool was raised by the attorneys of other parties the said Hatfield and Rutherford went to Parkersburg for the purpose, as affiant then was informed and understood, of avowing the authority of said Flesher, and, the provision therein relating to said Claypool being stricken out, the stipulation in other respects was left in force.

That affiant prior to the time before mentioned had never seen said Hatfield or Rutherford to know them, and never after had any conversation with either of them upon said subject or any other business matter.

That affiant has read the affidavits of A. M. Toler and J. M. Toler filed in this cause, and the statement therein that they or either of them saw this affiant and M. F. Stiles riding up and down Ben creek in 1896 and 1897 or at the house of said Hatfield cannot be true, for this affiant during most or all of January, 1896, was at Parkersburg, and about the last of January or first of February, 1896, returned home to New York, and was not again in the State of West Virginia until about July or August of the present year, except for three or four days in September, 1897, at which time he was not in Mingo county nor within many miles of Ben creek, and has never been on said creek since; and affiant had not in 1895 to 1901 and has not now any personal knowledge concerning the location or possession of the several tracts claimed by said Hatfield or Rutherford.

That affiant has seen a copy of the written stipulation, which copy he is informed will be filed in said Supreme Court, and to the best of his knowledge, memory, and belief it is a true copy of the stipulation hereinbefore mentioned and a correct statement of the agreement aforesaid.

And further affiant saith not.

V. A. WILDER.

Subscribed and sworn to before me this 20th day of November, 1901, in my county aforesaid, as witness my hand and notarial seal.

R. S. SPILLMAN,
Notary Public in and for said County
[SEAL.] *of Kanawha, W. Va.*

Affidavit of E. L. Buttrick.

STATE OF WEST VIRGINIA, } *ss:*
County of Kanawha, }

Edwin L. Buttrick, being duly sworn, doth say:

That he is one of the persons whose name is subscribed as counsel to the bill in the cause of Henry C. King *vs.* S. D. Hatfield *et als.*, formerly pending in the circuit court of the United States for the district of West Virginia.

That he is seventy-six years old and for thirty years last past has been a resident of West Virginia and a practitioner in the Federal and other courts in said State during that time.

That he has long been acquainted with the title and all proceedings relative to the Robert Morris 500,000-acre grant; that he read said bill before the same was filed, and that all the allegations or averments are true, except such as relate to the claim of title of the defendants, as to which he had no personal knowledge, but the allegations concerning the same he believes, upon information regarded as reliable, to be true.

That he has been associated in a number of cases with Maynard F. Stiles during the past eight years, and that said suit was to the best and utmost of affiant's belief instituted in the ordinary course of business and without any collusive co-operation of any person or for any improper or unusual purpose.

That said cause was regularly on the docket of said court

and was regularly called as all other cases when reached, and this affiant was in court at the time the demurrer to said bill was overruled in May, 1900, the announcement of said ruling being made in open court upon the call of the docket, in the presence of a large number of the bar, and affiant distinctly remembers that some member of the bar commented to the court upon said cause and the court's ruling thereon.

That affiant has occupied the same offices with said Maynard F. Stiles for five or six years past, and has never had the file of papers or any papers belonging to the court in the case of King *vs.* Altizer *et als.* in said office or out of court, and to the best of affiant's observation, knowledge, and belief the said papers have never been in the office of affiant and said Stiles, and affiant has no knowledge concerning their whereabouts.

EDWIN L. BUTTRICK.

Subscribed and sworn to before me this 29th day of November, 1901. Witness my hand and official seal.

H. McC. ANDERSON,

[SEAL.] *Notary Public.*

EXHIBIT No. 1 WITH AFFIDAVIT OF MAYNARD F. STILES.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 15th day of October, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
S. S. ALTIZER ET AL.

In ejectment.

This day came James H. Ferguson, Esquire, and withdrew as counsel from the defense in this cause as to the defendants Sarah G. Hatfield and Nancy Rutherford.

Thereupon, the venire drawn for service as jurors at this term being diminished by disabilities and excuses given to the court to twelve persons, it was ordered by the court that the marshal of this district shall return jurymen from the bystanders sufficient to complete the panel, to appear here tomorrow morning at 10 o'clock.

I, L. B. Dellicker, clerk of the circuit court of the United States for the northern district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in the circuit court of the United States for the district of West Virginia on the 15th day of October, 1895, in the ejectment case of Henry C. King *vs.* S. S. Altizer *et al.*, then therein pending.

Given under my hand and seal of said court, at Parkersburg, in said district, this 15th day of November, 1901.

[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., N. D. W. Va.

EXHIBIT No. 2 WITH AFFIDAVIT OF MAYNARD F. STILES.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 3rd day of July, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
SIMON ALTIZER ET AL.

In ejectment.

Upon motion of the plaintiff's attorney in this action, this cause is set down for hearing, as to M. B. Mullins, Alexander McClintock, J. W. Stafford, Alexander Stafford, King Hiram Blankenship, Sarah G. Hatfield, Nancy C. Rutherford, and William Claypool, on the 5th day of September, 1895, at the United States court-room in Parkersburg, West Virginia; the trial at that time is to be had between the plaintiff and these defendants, and none others, parties to this cause.

And it is ordered that upon the question of forfeiture, which the court is advised will be raised in this cause, counsel file briefs on or before the 15th day of August next, counsel exchanging with each other copies of their briefs before the same is filed.

But the stipulation entered into on June 15th, 1895, between Maynard F. Stiles and H. K. Shumate, attorneys for H. C. King, plaintiff, and Sarah D. Hatfield, Nancy Rutherford, and Wm. Claypool, by Henry C. Flesher, their attorney, is not in anywise to prejudice or affect the rights of any of the other parties to this cause.

I, L. B. Dellicker, clerk of the circuit court of the United States for the northern district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in the circuit court of the United States for the district of West Virginia on the 3rd day of July, 1895, in the ejectment case of Henry C. King *vs.* Simon Altizer *et al.*, then therein pending.

Given under my hand and seal of said court, at Parkersburg, in said district, this 15th day of November, 1901.

[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., N. D. W. Va.

EXHIBIT NO. 3 WITH AFFIDAVIT OF MAYNARD F. STILES.

(Supreme Court of Appeals of West Virginia, December 8, 1900.)

STATE
vs.
STILES.

Writ of error—Disbarment of attorney—Evidence.

1. Where a judgment is rendered by a circuit court disbarring one of the attorneys practicing before it for alleged malpractice in disregarding a stipulation with opposing counsel as to the continuance of a case, this court has jurisdiction by writ of error to such judgment.
2. The evidence in such proceeding to disbar an attorney must support the charges, and be clear and preponderating.
3. The power to disbar an attorney is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility, but in doing so the court should exercise a sound and just judicial discretion.

(Syllabus by the court.)

Error to circuit court, Wyoming county—Joseph M. Sanders, judge.

Application for the disbarment of Maynard F. Stiles. From a judgment of disbarment Stiles brings error. Reversed.

E. L. Buttrick, for plaintiff in error; Edgar P. Rucker, attorney general; L. C. Anderson, and C. W. Campbell, for the State.

ENGLISH, *J.:*

A suit was pending in the circuit court of Wyoming county in the name of the State of West Virginia against Henry C. King and others for the purpose of selling 500,000

acres of land patented to Robert Morris by the Commonwealth of Virginia in June, 1795, for the benefit of the school fund. King presented a petition in said case, offering to pay the taxes that might be due thereon and praying that he might redeem the same from forfeiture, and was represented by Maynard F. Stiles as one of his counsel. Alexander McClintock also filed a petition in said case, claiming to be the owner of 142,000 acres, known as the "De Witt Clinton tract," patented by the Commonwealth of Virginia on the 19th of February, 1796, claimed in said petition to overlap the Morris grant, denying King's ownership of said 500,000-acre grant, and denying his right to redeem, in which petition he was represented by John A. Sheppard and others as his counsel. During the pendency of the suit King brought an action of ejectment against McClintock and others to recover said 500,000-acre grant, and on February 27, 1896, judgment was rendered against said King on the ground that his title had been forfeited for non-assessment of taxes thereon. From this judgment a writ of error was obtained to the Supreme Court of the United States. While said writ of error was pending in the Supreme Court, M. F. Stiles, representing H. C. King, and Sheppard, representing McClintock, entered into a stipulation for the continuance of said cause in the circuit court of Wyoming and before the commissioner until the cause of King against McClintock should be decided by the United States Supreme Court, which case was to be submitted on briefs within the first ninety days of the term of that court then in session; but if said court should require oral argument in addition to the briefs, and should not decide said case upon such submission, then said proceeding in the circuit court should not be continued after the refusal of the Supreme Court to decide the cause by reason of said stipulation. At the June term, 1898, of said circuit court John A. Sheppard presented his affidavit, charging Stiles with unprofessional conduct, consisting of the violation of said stipulation in this, that in the absence of Sheppard and his client, and in violation of his duty as an attorney of that court, he dishonestly procured the circuit court of Wyoming to enter a decree substituting D. A. Robertson as commissioner in the room and instead of J. R. Robertson, to whom said chancery cause had been referred and with whom a copy of said stipulation had been filed by affiant, and corruptly procured

the said commissioner to proceed and take proof and make his report without notice to affiant or his client, and secretly took his proof, and corruptly and in disregard of his professional duty suppressed the evidence that had been taken before the first commissioner, and procured said commissioner to file his report under said decree of reference, wherein it was found that said King was entitled to redeem said tract of 500,000 acres of land. Affiant also stated his belief and charged that Stiles prepared said report or dictated its findings and procured one Shumate, a practicing attorney in said court, at the September term, 1897, to obtain a decree of redemption of said tract, and that Shumate, at the instance and request of Stiles, procured the entry of a decree permitting Henry C. King to pay to the commissioner of school lands of said county a small sum of money, adjudging that by the payment aforesaid he had redeemed the same. Affiant further stated that Stiles and Shumate, who were associated as counsel in the case, had frequent opportunity of giving him notice of their action and intended action in the case, but refrained from so doing, and when Shumate moved the court to enter said decree of redemption for his client King, he represented to the court that there was no opposition to said redemption, and that no one was objecting or opposing the said decree, while he well knew there was objection by affiant on behalf of McClintock to any decree in favor of King. Upon the filing of this affidavit a summons was awarded against Stiles, requiring him to appear at the next general court and show cause, if any he could, why his name should not be stricken from the roll of practicing attorneys in that court and deprived of the privilege of practicing his profession in that court. At a subsequent term of the court said Stiles appeared and moved to quash the rule awarded against him for several reasons assigned. He also filed his answer to said rule, denying every material allegation contained in said affidavit, and interposed a demurrer to said rule. The court overruled said demurrer and motion to quash and proceeded to hear testimony, and on March 30, 1899, entered an order holding that Stiles had conducted himself in a manner unworthy of a reputable attorney, and had abused his privileges as an enrolled member of the bar of that court, and ordered that his name be stricken from the roll of attorneys practicing at the bar

of that court, and directed that he be prohibited from further exercising his office of attorney-at-law in that court. From this judgment Stiles obtained this writ of error.

Counsel for the State in their brief raise a question of jurisdiction, and claim that the writ of error was not the proper remedy. In considering this question, we ask, first, what was the character of the accusation against Stiles in pursuance of which the penalty was inflicted? The only response can be that it was malpractice, consisting in the violation of said stipulation. The fact that the penalty imposed was a severe one is apparent when we take into consideration the privilege conferred by defendant's license to practice in all the courts of the State, which is acquired only after obtaining a certificate of good moral character, and when we consider, further, that striking from the roll of attorneys in one county to that extent deprives him of his license and degrades him in the ranks of an honorable profession. In Fisher's case, 6 Leigh, 619, it was held that, by the provisions of the statute (1 Rev. Code, c. 76, 6), a court cannot, for malpractice of an attorney or counselor, committed in its presence, suspend the license of the party offending, in a summary way, but must direct an information to be filed against him and inflict the punishment on a verdict of guilty found in such information. In that case Chapman Johnson, attorney for Fisher, first applied to the court of appeals for a supersedeas to the order, which was refused. He then applied to the general court, and the writ of error was allowed, jurisdiction taken of the case, and a decision rendered, in which the court recognizes its own power, independent of any statutory restriction, in a proper case to suspend or annul the license of an attorney, so far as it authorizes him to practice in the particular court which pronounces the sentence, but no further, and concludes by holding that before such a judgment as that pronounced by the court below could be given, the party accused must be regularly prosecuted, by information or indictment, and found guilty by a jury. Again, in State *vs.* McClaugherty (W. Va.), 10 S. E., 407, which was a proceeding for contempt of court, consisting in the publication of an article reflecting upon the circuit court of Mercer county, a writ of error was awarded, and this court took jurisdiction of the case and passed upon the question involved. Snyder, J., speaking

for the court, quotes with approval from the opinion rendered in the case of Rice *vs.* Com., 18 B. Mon., 484: "The power to remove an attorney from the bar ought to be exercised with great caution and discretion, but it is a power incidental to all courts, and, unless it be clearly exceeded or abused by a circuit court, this court should not interpose, as it cannot decide with the same means of information that the court below was in possession of;" citing *Ex parte* Burr, 9 Wheat., 530; 6 L. Ed., 152, in which case the opinion was written by Chief Justice Marshall, and the first point of the syllabus suggests a query "as to the authority of said court to interfere by mandamus in the case of the removal or suspension of an attorney of the district and circuit courts." In *Ex parte* Secombe, 19 How., 9; 15 L. Ed., 565, the court says: "It has been well settled by the rules and practice of the common-law courts that it rests exclusively with the court to determine who is qualified to become one of its officers, as attorney and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court as the rights and dignity of the court itself." The court, having the right to use its sound judicial discretion in determining such matters, cannot be controlled in the exercise of its discretion by mandamus. (See Board *vs.* Minturn, 4 W. Va., 300.) That this court has jurisdiction of a writ of error to a judgment disbarring an attorney, see the case of State *vs.* Shumate (recently decided), 37 S. E., 618.

As to the merits of the case, can we say the charges upon which the plaintiff in error was disbarred were sustained by the testimony? "He was charged with having obtained an order at the March term, 1897, substituting D. A. Robertson as school commissioner in place of his brother, J. R. Robertson, but Colonel Childers testifies that he wrote the order making the change at the request of J. R. Robertson, and was representing the State, having filed a bill in the case, and in presenting the order substituting the said commissioner had no suggestion from Stiles or communication with him about it; and the evidence shows that Stiles

was not in court during the term, but that C. M. Turley, one of the counsel for McClintock, was present and made no objection to the order It is charged that the plaintiff in error, at the September term, 1897, requested H. K. Shumate to procure the making and entering of the decree permitting said King to redeem said 500,000 acres of land by the payment of a small sum of money; yet the testimony shows that the papers were presented and the decree of redemption asked for by Colonel Childers, who prepared the bill and represented the school commissioner, and it is also shown by the testimony and the certificate of the court that Stiles was not present at that term of court. M. F. Stiles is charged with suppressing the testimony taken before J. R. Robertson, but he shows in his testimony that such was not the fact, and no proof was taken to sustain the allegation. It is also shown by the testimony that after the new commissioner was appointed, and had given notice by publication that the school commissioner was proceeding to take testimony, and a witness named Sell had been introduced before the commissioner by the State, Stiles appeared and cross-examined him, and perhaps offered some documentary evidence. It further appears that the decree of redemption was entered by consent of counsel representing the school commissioner, and Wilder and Shumate, attorneys, representing King; so that, in my opinion, the charges are not sustained by a preponderance of the evidence, as they should be, in accordance with the rule laid down in Walker *vs.* State, 4 W. Va., 749. The judgment complained of is reversed.

EXHIBIT No. 4 WITH AFFIDAVIT OF MAYNARD F. STILES.

STATE OF WEST VIRGINIA:

At a special term of the supreme court of appeals, continued and held in Charleston, county of Kanawha, on the 8th day of December, 1900:

STATE OF WEST VIRGINIA, *Plaintiff Below, Defendant in Error,*
vs.
MAYNARD F. STILES, *Defendant Below, Plaintiff in Error.*

Upon a writ of error and supersedeas to a judgment of the circuit court of Wyoming county rendered on the 30th day of March, 1899.

The court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said judgment.

It is therefore considered that the finding and judgment of the circuit court of Wyoming county, made and rendered in this case on the 30th day of March, 1899, be, and the same is hereby, set aside, reversed, and annulled.

And this court, proceeding to make and render such finding and judgment in this case as the circuit court of Wyoming county should have made and rendered, doth now find the defendant not guilty of the charges specified in the affidavit of John A. Sheppard, mentioned in the rule awarded by said circuit court against the defendant to show cause why he should not be disbarred as an attorney practicing in said circuit court. It is therefore considered that said rule be, and the same is hereby, discharged; which is ordered to be certified to the circuit court of Wyoming county.

The decision of points in the foregoing case, as appears from the syllabus and written opinion prepared by Judge English, was concurred in by Judges McWhorter, Brannon, and Dent.

(A true copy from the record.)

Attest:

[SEAL.] J. A. HOLLEY, *Clerk.*

EXHIBIT No. 5 WITH AFFIDAVIT OF MAYNARD F. STILES.

STATE OF WEST VIRGINIA:

At a circuit court continued and held for the county of Logan, at the court-house thereof, on Wednesday, the 26th day of October, A. D. 1898.

Hon. E. S. Doolittle, judge, presiding.

THE STATE
vs.
MAYNARD F. STILES.

Upon a rule for contempt.

This day came The State, by her attorney, as well as the defendant, Maynard F. Stiles, in his own person, and also by attorney.

And thereupon the defendant moved the court to quash the rule awarded against him, and in support of said motion tendered his answer to said rule; which motion, being argued and considered, is overruled.

And thereupon the defendant tendered and, by leave of court, filed his answer to said rule, and issue is joined thereon; and thereupon all matters of law and fact were submitted to the court, who, after hearing the evidence and arguments of counsel, is of opinion, and so finds, that the defendant, Maynard F. Stiles, was and is guilty of *the* contempt of this court in obstructing its lawful process and decree, as charged in said rule, in preparing, swearing to, and causing to be filed a bill in equity in the name of Henry C. King in the circuit court of the United States for the district of West Virginia, and in obtaining thereon an order from said court enjoining and restraining Joseph W. Hindman, commissioner of school lands of this county, from selling certain lands which this court had decreed to be sold and had appointed the said Joseph W. Hindman, commissioner, as aforesaid, to advertise and sell same in accordance with said decree, and in causing a copy of said order to be served upon the said Joseph W. Hindman, commissioner aforesaid.

It is therefore considered by the court that the said Maynard F. Stiles, for his contempt aforesaid, be, and he is hereby, committed to the jail of this county, and there to be confined until the said bill filed, as aforesaid, in the circuit court of the United States be dismissed of record and the in-

junction awarded thereon wholly dissolved and the payment of the costs hereinafter adjudged against him; to which ruling and judgment of the court the defendant excepts.

It is further considered that the State recover from the said Maynard F. Stiles her costs in this behalf expended, including ten dollars ($10.00) allowed by statute.

A copy from the original order.
Teste: T. C. WHITED, *C. Clerk.*

Endorsed: "Exhibit No. 5."

UNITED STATES OF AMERICA }
Southern District of West Virginia, } ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, do certify that the foregoing is a true copy of Exhibit No. 5 filed with the petition of Maynard F. Stiles in the proceeding *Ex parte* Stiles and now of record in my office.

In testimony whereof I hereto set my hand and the seal of said court, at Charleston, in said district, this 23d day of November, A. D. 1901, and in the 126th year of the Independence of the United States of America.

[SEAL.] EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

EXHIBIT No. 6 WITH AFFIDAVIT OF MAYNARD F. STILES.

At a circuit court of the United States for the district of West Virginia, continued and held in the city of Charleston, in said district, on Saturday, January 14th, A. D. 1899, among others, the following proceedings were had:

Ex Parte STILES.

The body of the said Maynard F. Stiles being brought before the court pursuant to the writ of *habeas corpus* heretofore awarded herein, and the return to said writ having been considered, and the said cause having been argued by counsel, and it appearing to the court that the facts and circumstances and matters therein set forth are not sufficient to justify the imprisonment of the said Stiles, and no sufficient

cause for his detention appearing, it is by the court *ordered* that the said Maynard F. Stiles be by the said sheriff and jailer forthwith discharged from imprisonment.

UNITED STATES OF AMERICA, }
Southern District of West Virginia, } ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, do certify that the foregoing is a true copy of an order entered in the proceeding *Ex parte* Maynard F. Stiles and now of record in my office.

In testimony whereof I hereto set my hand and the seal of said court, at Charleston, in said district, this 23d day of November, A. D. 1901, and in the 126th year of the Independence of the United States of America.

[SEAL.] EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

EXHIBIT NO. 7 WITH AFFIDAVIT OF MAYNARD F. STILES.

UNITED STATES OF AMERICA, }
Southern District of West Virginia, } ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, and as such clerk custodian of the records of the circuit court of the United States for the district of West Virginia, previously sitting at Charleston, do certify that I have examined the trial dockets on file in my office and find that at the spring term, 1899, the case of Henry C. King *vs.* S. D. Hatfield *et al.*, No. 363, in equity, is regularly entered on the clerk's copy in lead pencil, apparently in handwriting of the clerk, and that the said case is not on the judge's copy of said docket; and I do further certify that the said cause is regularly on both the clerk's and judge's copies of the trial dockets for the fall term, 1899, spring term, 1900, and fall term, 1900.

In testimony whereof I hereto set my hand and the seal of said court, at Charleston, in said district, this 23d day of November, A. D. 1901, and in the 126th year of the Independence of the United States of America.

[SEAL.] EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

IN THE SUPREME COURT OF THE UNITED STATES.

S. D. HATFIELD ET AL., *Appellants*,
vs.
HENRY C. KING, *Appellee*.

On petition of State of West Virginia and others to intervene.

Now comes Henry C. Flesher and, in opposition to the motions of the State of West Virginia and of Stuart Wood and of other persons who have presented petitions herein, tenders his affidavit and exhibits thereto and prays that said petitions and motions and each of them be dismissed—

Because no ground exists for the action requested against him, the said Henry C. Flesher, or for the annulment of the decree appealed from in the manner proposed by said petitions, but only for reversal thereof for the errors specified in the assignment of errors accompanying the petition for appeal.

HENRY C. FLESHER.

STATE OF WEST VIRGINIA:

Henry C. Flesher, being first duly sworn, doth depose as follows:

Some time about May, 1895, H. K. Shumate, a lawyer, then living at Logan, West Virginia, and who was one of the attorneys of Henry C. King in an action of ejectment against a number of persons living in Logan and McDowell counties and elsewhere, came to me or met me and told me that some of said defendants, Mrs. Hatfield, Mrs. Rutherford, and William Claypool, who had been clients of his in other cases, wanted to be referred to some lawyer who would look after their defense, and that he had recommended me, and they had directed him to ask me to appear for them. This I was willing to do. He also told me that he had made an agreement with them relative to the trial

of the cause as to them. Some time later, while on the way from Matewan to Elkhorn, where I then lived, I met Mrs. Hatfield, who was on the train when I entered, and told her what Mr. Shumate had said to me about the King suit, and she said she had told him to speak to me about the matter, and said she would like to have me represent her and her daughter, Mrs. Rutherford, who was then living with her. We discussed the case, and I verified what Shumate had told me. Some time thereafter she sent me the papers relating to her and Mrs. Rutherford's lands and to the case, and these papers remained in my possession until long after the institution of the present suit and some time in 1899, when I returned the title papers to her for the purpose of conveyance or contract relating to her land.

The stipulation that was signed by me on behalf of the said Hatfield, Rutherford, and Claypool was, in my judgment, very advantageous to them, as they admitted thereby nothing with reference to the plaintiff's title or case that was not well known, easy of proof by him, and that has not since been often established, while admissions were made by the plaintiff that, while true and susceptible of proof, required time and labor and expense to produce the necessary evidence, while not only were they relieved of proof of title to certain lands, but were released as to those lands. I regarded and still believe the advantages of the arrangement to be distinctly with my clients. A copy of said stipulation, the typewritten portion of which is, to the best of my knowledge and recollection, a carbon copy of all of the original that was in typewriting, and with additions, interlineations, erasures, and alterations corresponding to those made in the original and made at or about the same time, except the striking out of the Claypool part, and which copy I retained at the time of signing the original, is hereto attached and marked "Stipulation." The signatures were not attached to this copy, but instead thereof I

made a note of same. M. F. Stiles was not present and I had had no communication with him upon the subject.

At the time of signing said stipulation I had had no direct instruction from said Claypool upon the subject, although I expected to have in proper time, but fully believed then, as I do now, that he had directed said Shumate to request me to represent him, as stated by Shumate, having found that to be the case with the other parties and having entire confidence in the statement of said Shumate, whom I knew well.

About the time the rule was awarded that is exhibited on page 95 of the petitions and exhibits in this case, a lawyer from Welch, returning from Parkersburg, told me that my authority to represent some of the parties in the case had been disputed by some other persons, and that Judge Jackson had declared that he knew me and had confidence in my integrity, or something to that effect, but that they could have the rule if they wanted it. No rule was ever served on me, and the first knowledge that I ever had that any was in fact ever awarded was when I saw the printed copy above mentioned. Some time afterwards Mrs. Hatfield told me that she and Mrs. Rutherford had been at Parkersburg on the same matter. She also told me that M. B. Mullins (whose affidavit is referred to in said rule) and C. M. Turley had come to her house one morning, after having been overtaken on the way by darkness and rain and forced to camp over night on the mountain in the rain, and sought to persuade her and Mrs. Rutherford to repudiate the stipulation and me as their counsel, which they refused to do.

The stipulation aforesaid was not made for any purpose of imposing upon the court or upon any one else, nor did it nor could it do so, but for the purpose of a speedy adjudication by the court of actual controversies and for the decision of questions that must be decided before any conclusion could be reached, and the court took the case with full understanding of the agreement and of the position of the par-

ties and counsel. Before the court acted upon the matter the time for trial as to Mullins and McClintock, who were not parties to the stipulation, arrived, and the case was continued as to all other defendants, and the matter remained in abeyance.

Of my absolute authority to represent the said Hatfield and Rutherford in the King litigation I had and have no more doubt than that the plan of trial agreed upon was advantageous to them.

Considerable time after the filing of the bill in the present case, M. F. Stiles, one of the attorneys for the complainant therein, meeting me on the street at Welch, told me he had filed the same, stating the general nature of it, and asked whether I would accept service or waive process for the defendants and avoid the cost of sending a marshal more than two hundred miles to make service. I told him to send me a copy of his bill when he got home, and I would see what to do. Soon after he sent me a copy.

I examined the bill carefully. It appeared to follow closely along the line of the previous stipulation as to all matters of fact relating to the situation of the King title, with which I was familiar, and to state the situation of defendants fairly. I discovered no ground of demurrer, except the one stated in my demurrer, nor do I perceive any yet. If the legal contention of the plaintiff as to the invalidity of the State constitution was unsound, he had no case. I therefore framed the demurrer to what appeared to me the vital point and one defect in the case, and at the next term of court at Charleston presented it in person in court, having that day notified said Stiles, whose office was opposite the court-house, that I would do so, and the demurrer was by order made in open court set down for argument, and after a brief oral discussion was submitted, the court being supplied with copies of all the briefs that had been filed by all the counsel in the case of King *vs.* Mullins in this court. The court took the case

under advisement, and after several months overruled the demurrer. The court did not at that time deliver any written opinion, but stated or intimated that he had intended to do so. I told him I wished he would do so; I wanted to see his reasons in full.

Two defenses remained that could be presented by answer, viz., title by prescription, and the question of boundary of the plaintiff's grant, neither of which I believed could be maintained. I had canvassed the question of possession at the time it was expected to go to trial under the stipulation, and was satisfied it could not be established as to any land that the plaintiff did not by the stipulation agree to release. One object of the agreement of plaintiff to dismiss was to avoid any question of adverse possession. In objection to the location of the plaintiff's grant as set out in the bill and in the decree of the Wyoming court, I had no faith; that question, as well as all questions relating to the plaintiff's title, except the one of forfeiture, had not long before been tried in the United States circuit court for the Western district of Virginia, in a trial lasting several weeks, and defended by a corps of able lawyers backed by the resources of a wealthy timber corporation, and the plaintiff had prevailed upon every material point and had recovered a verdict and judgment, the learned and experienced judge, the late John Paul, taking from the jury the question of location by a specific direction on the concurrent evidence for plaintiff and defendants to find the boundaries according to the plaintiff's contention. (See King *vs.* Watkins, 98 Fed., 913.) To stand upon the provisions of the State constitution, which, if valid, constituted a perfect defense, was, in my judgment, the proper course to take, and I did not avoid the responsibility. I do not see how I am justly subject to criticism by counsel who insist that those provisions are valid.

After the decision of the case there was nothing to do but do nothing or appeal. I wrote Mrs. Hatfield the result, and

that I would appeal, and did so. Somewhat later, at my request, she came to see me and fully approved my course in the case. Her approval and attitude will appear from a letter received from her some time after and hereto attached marked "Hatfield letter."

I took the appeal on my own judgment and in the interest of the appellants, although, as counsel for the commissioner of school lands of McDowell county I was otherwise interested in a reversal. I had no agreement with counsel for King except for submission, which appears of record.

At the time the suit was brought and I appeared to it I still had the papers of Mrs. Hatfield and Mrs. Rutherford, as I supposed her name still to be, not having heard about her second marriage, and no suggestion of any revocation of my authority had been made by or on behalf of either of them. Mrs. Rutherford had sanctioned and ratified the action of Mrs. Hatfield in employing me to represent her in the first place, and I had no doubt about my continued authority to act for them.

I was never the attorney, counsel, or agent of Henry C. King in any case or in any matter, and was never employed or paid by him or by any one for him to appear for the said defendants or for any other person, or to perform any service for him or for any one else at any time or place.

I had no communication with M. F. Stiles or any one representing King about the present case prior to the time when said Stiles informed me he had brought this suit. I had nothing to do with the bringing of the suit and no knowledge or intimation prior to that time that such a suit was contemplated, and I was not "procured" by him to appear thereto. I had no purpose or expectation of procuring from the court any opinion or ruling, except as the questions at issue demanded a ruling, which I could not control or forecast, though I expected a favorable decision, and no thought and no act of mine had any reference to Stuart Wood, Arthur D. Bright, or any of the other persons who

ask to intervene in this suit. The most of them I had never heard of, and had no sentiment for or against any of them; and any statement, wherever made, that I entered into any collusion with any person, or sought to impose upon the court, for which, and the distinguished judge who heard the case, I have the greatest reverence, or had any improper purpose or motive, or that the case was, so far as I was or am concerned, fictitious or manufactured or in any way unreal, is without any basis of fact or truth whatever, as is the suggestion that any secrecy or mystery existed concerning the case; and I am moved to wonder how the persons referred to are to be affected, if, as they contend, the facts in their cases or the cases they expect to have are wholly different. I knew nothing of their situation and know nothing of it now.

About the incident mentioned in the affidavit of S. U. G. Rhodes I have this to say: Some time about the middle of October he came to me, and said he had been sent by Mrs. Browning, and showed me a letter purporting to be written by her to said Rhodes. I did not recognize the name nor connect her with Mrs. Rutherford, and said I had never appeared for her. This statement I corrected when he told me who she was. The manner of Mr. Rhodes and the criticism of my management of the case, with which he opened the interview, were not pleasant. They suggested the effort made by Mr. Sheppard to force himself and his associates upon my clients instead of coming to me, which Mrs. Hatfield had reported to me some months before and which she had repelled. I resented his manner and made no effort to extend the conversation, but told him that if he had been employed in the case and knew better how to manage it and thought he could win it, to go ahead. I did not tell him that "they will both be taken care of, regardless of how the case is decided in the Supreme Court," but I did say that their rights would be taken care of without reference to him, or something to that effect.

Counsel have seen fit to refer to the suspension of my license by the circuit court for Jackson county, West Virginia. The facts concerning the matter should also be told. There was a dispute between myself and Thompson & Jackson over the alleged indebtedness, and they brought suit. At the time and for some two years previously I was living in McDowell county, between three and four hundred miles distant by rail, the Norfolk and Western road not having been completed. I returned to defend the suit and had got to Ripley Landing, within thirteen miles of the court-house, when I learned that judgment had been entered by default, and the court, after a session of three or four days, had adjourned. Subsequently I paid the judgment, although excessive.

I am sixty-six years old and was born and have lived all my life in West Virginia, and it is a matter of no small pride that, with all the investigation to which my life and character seem to have been subjected, only the incident referred to appears to have been deemed to my disadvantage or detraction.

In enlargement of the foregoing I wish to repel and deny every charge and suggestion of collusion, imposition, misconduct, improper purpose or motive, or professional or other impropriety of any kind in connection with the matters herein mentioned in either court, and to declare my great respect for the court and my understanding of my professional obligations.

HENRY C. FLESHER.

Subscribed and sworn to before me. Attest my hand and the seal of the supreme court of appeals of West Virginia this 23d day of November, 1901.

[SEAL.]

D. C. REAY,
Deputy Clerk.

Hatfield Letter.

WHARNCLIFF, W. VA.,
MINGO CO.,
Feb. 27th, 1901.

MR. HENRY FLESHER SIR.

I wright you a few lines To let you heare from mingo Co. I went to williamson the evening I left welch. Mr. Shepard wanted me to let Him & others to be my Attorney, I told him I Had alwayer to tend to my Buisness, he wonted to write to you that I wanted you to take another lawyer to Help you I told him no I would wright to you myself & if you wanted another lawyer it would be all rite with me. if you want one you be your own judge about the matter. he said that my attorney had let my land sell & and it would Be hard to get it Back again I told him I had bin sold out so often it did not go anys hard with me. tha ask if i was aquainted with Mr Ieagar. I was how long along time Dr Ieagar uste to be our family doctor when he practed medicine. then tha ask who went on my bond I told them. tha are on a hi string you had better wright to me when you wright on envelop that got no Return on it just Back it to wharncliff.

have Mr Ieagar to settle the cost of my suit & send me a receipt I want to be ready for all that comes around.

So, I close Yours Truly

S. D. HATFIELD.

"Stipulation."

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

HENRY C. KING, *Plaintiff*,
vs.
SIMON S. ALTIZER ET ALS., *Defendants*.

For the purpose of a convenient presentation of the controversies between plaintiff and defendants Sarah D. Hatfield and Nancy C. Rutherford, who for the purpose of trial sever from their codefendants in the above-entitled action, plaintiff and said defendants, by their respective attorneys, stipulate and agree as follows:

That the Commonwealth of Virginia granted to Robert Morris the tract of land mentioned in the declaration in this action, as therein stated, and that afterwards the said land, by sundry acts of legislature, decrees of courts, and conveyances, became vested in one Robert E. Randall, trustee, appointed by the courts of Virginia and West Virginia, successor to John Peter Dumas, trustee, for the creditors of James Swan, deceased, appointed by act of legislature of Virginia of March 15, 1838, and subject to such rights as the State of West Virginia acquired therein, if any, by failure of said Randall to pay taxes thereon levied by said State, and subject to such rights, if any, as these defendants had therein, was so vested in said Randall, trustee, on the 10th day of April, 1883.

That on said day, in a proceeding pending in the circuit court of said State for the county of Wyoming, wherein a part of said land lies, instituted by the commissioner of school lands against said land and the owners and claimants thereof, to sell same for the benefit of the school fund of said State, as forfeited and delinquent land, upon the petition of said Randall filed therein and upon the payment by him of

the sum of $8,000, which was adjudged to be the amount of taxes, interest, costs, and damages due to said State upon said land, a decree was duly entered adjudging said Randall, trustee, to be the owner of said land and releasing and discharging the same from all taxes, forfeitures, and claims of said State up to and including the said year 1883, reserving to said defendants all rights secured to them under the constitution and laws of said State.

That said decree directed the clerk of said court to certify a copy of said decree to the auditor, and also to "certify, under the direction of said Randall or his attorney, a copy of this order to the assessor of the proper assessment districts for taxation."

That said $8,000 was duly paid by said Randall, trustee, and proper settlement and distribution of same between the several counties wherein said land lies was made.

That it does not appear from said books that said land was thereafter placed upon the land books of said counties for taxation or since said decree been charged with taxes; but the omission of said land from the assessor's books has not been reported to the auditor of said State, nor has any report concerning such omission been made by or to any officer whatever, and no report of record concerning same exists or has anywhere or at any time been made, as required by statute or otherwise, since the entering of said decree of April 10, 1883.

That plaintiff is now and at the time of filing said declaration was vested with all the estate vested in said Randall, trustee, on said tenth day of April, 1883, or immediately after the exoneration of said land from taxes by said decree, as aforesaid, except so far as his title and estate may be affected by any non-entry of said land upon the assessor's books, as aforesaid, and except so far as these defendants have right or title to portions of said land adversely to plaintiff by grant from the State and by adverse possession thereunder.

Said defendants contend that, by reason of the aforesaid non-entry of plaintiff's said tract of land upon the assessor's books, said tract of land is forfeited to and is absolutely vested in the State of West Virginia, and that plaintiff cannot maintain his action of ejectment thereon, and for the purposes of determining said question, and for no other purpose, said defendants admit that they have entered upon and withhold said land from plaintiff.

Plaintiff contends that notwithstanding said non-entry of said lands the same are not forfeited to said State, and that he is entitled to maintain his said action against said defendants.

And the said parties agree that the issue above raised shall be argued and submitted by them to this said court, at Parkersburg, at the approaching June term thereof, upon such day, not earlier than the 25th day of June, as the court will entertain the same.

If the said court shall hold that plaintiff may maintain said action of ejectment, then said defendants deny that they unlawfully withhold any portion of said land from plaintiff; deny that the lands claimed by said defendants are within the said tract of land claimed by plaintiff, and stand upon their pleas of "not guilty" heretofore entered is said action, and said action shall then be set down for trial as soon after the determination of the right of plaintiff to maintain same as the court will hear the same, and shall be then tried; provided said trial be not earlier than the 25th day of June, 1895.

And it is further stipulated that if the tracts of land hereinafter mentioned or any of them shall be found to lie within the boundaries of the said tract of land mentioned in the declaration in this action, then it is agreed by plaintiff that for the said tract said action shall be dismissed as to them.

The tracts of land to which the last above clause applies are the following, viz:

For Sarah D. Hatfield and Nancy C. Rutherford, the surface right of a patent of 390 acres patented to Ali Hatfield and others, and of 450 acres patented to Ali Hatfield; one of 66 acres, also patented to Ali Hatfield; the lower part of a patent of 79 acres, patented to T. E. and J. R. Browning; the upper part of a patent of 46 acres, patented to Ali Hatfield, and the western half of a patent of 420 acres, patented to William Mullins, all adjoining each other on the left-hand fork of Ben creek, in Mingo county, State of West Virginia upon which the said Sarah D. Hatfield now resides.

For Wm. Claypool, the upper half of a patent of 500 acres patented to William Ward, and two smaller patents patented to said William Claypool, adjoining the same above on Big Huff creek, in Logan county, State of West Virginia, where the said Claypool now resides.

(Last paragraph scratched out with pencil.—PRINTER.)

JUNE 15, 1895.

Signed by H. K.
SHUMATE, *Att'y*
for H. C. King.

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